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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 18, 2003

Mr. FRIST (for Mr. GRASSLEY) (for himself, Mr. BAUCUS, Mr. HATCH, Mr. GRAHAM of Florida, Mr. SMITH, Mr. DASCHLE, and Mrs. MURRAY) introduced the following bill; which was read twice and referred to the Committee on Finance

OCTOBER ____ (legislative day, _____), 2003

Reported by Mr. GRASSLEY, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE;**
 2 **TABLE OF CONTENTS.**

3 (a) **SHORT TITLE.**—This Act may be cited as the
 4 “Jumpstart Our Business Strength (JOBS) Act”.

5 (b) **AMENDMENT OF 1986 CODE.**—Except as other-
 6 wise expressly provided, whenever in this Act an amend-
 7 ment or repeal is expressed in terms of an amendment
 8 to, or repeal of, a section or other provision, the reference
 9 shall be considered to be made to a section or other provi-
 10 sion of the Internal Revenue Code of 1986.

11 (c) **TABLE OF CONTENTS.**—

Sec. 1. Short title; amendment of 1986 Code; table of contents.

**TITLE I—PROVISIONS RELATING TO REPEAL OF EXCLUSION FOR
 EXTRATERRITORIAL INCOME**

Sec. 101. Repeal of exclusion for extraterritorial income.

Sec. 102. Deduction relating to income attributable to United States production activities.

TITLE II—INTERNATIONAL TAX PROVISIONS

Subtitle A—International Tax Reform

Sec. 201. 20-year foreign tax credit carryforward.

Sec. 202. Look-thru rules to apply to dividends from noncontrolled section 902 corporations.

Sec. 203. Foreign tax credit under alternative minimum tax.

Sec. 204. Recharacterization of overall domestic loss.

Sec. 205. Interest expense allocation rules.

Sec. 206. Determination of foreign personal holding company income with respect to transactions in commodities.

Subtitle B—International Tax Simplification

Sec. 211. Repeal of foreign personal holding company rules and foreign investment company rules.

Sec. 212. Expansion of de minimis rule under subpart F.

Sec. 213. Attribution of stock ownership through partnerships to apply in determining section 902 and 960 credits.

Sec. 214. Application of uniform capitalization rules to foreign persons.

Sec. 215. Repeal of withholding tax on dividends from certain foreign corporations.

Sec. 216. Repeal of special capital gains tax on aliens present in the United States for 183 days or more.

1 **TITLE I—PROVISIONS RELATING**
2 **TO REPEAL OF EXCLUSION**
3 **FOR EXTRATERRITORIAL IN-**
4 **COME**

5 **SEC. 101. REPEAL OF EXCLUSION FOR EXTRATERRITORIAL**
6 **INCOME.**

7 (a) IN GENERAL.—Section 114 is hereby repealed.

8 (b) CONFORMING AMENDMENTS.—

9 (1)(A) Subpart E of part III of subchapter N
10 of chapter 1 (relating to qualifying foreign trade in-
11 come) is hereby repealed.

12 (B) The table of subparts for such part III is
13 amended by striking the item relating to subpart E.

14 (2) The table of sections for part III of sub-
15 chapter B of chapter 1 is amended by striking the
16 item relating to section 114.

17 (3) The second sentence of section
18 56(g)(4)(B)(i) is amended by striking “or under sec-
19 tion 114”.

20 (4) Section 275(a) is amended—

21 (A) by inserting “or” at the end of para-
22 graph (4)(A); by striking “or” at the end of
23 paragraph (4)(B) and inserting a period; and
24 by striking subparagraph (C), and

1 (B) by striking the last sentence.

2 (5) Paragraph (3) of section 864(e) is
3 amended—

4 (A) by striking:

5 “~~(3) TAX-EXEMPT ASSETS NOT TAKEN INTO~~
6 ~~ACCOUNT.—~~”

7 “(A) IN GENERAL.—For purposes of”, and
8 inserting:

9 “~~(3) TAX-EXEMPT ASSETS NOT TAKEN INTO~~
10 ~~ACCOUNT.—For purposes of”, and~~

11 (B) by striking subparagraph (B).

12 (6) Section 903 is amended by striking “114,
13 164(a),” and inserting “164(a)”.

14 (7) Section 999(e)(1) is amended by striking
15 “941(a)(5),”.

16 (e) EFFECTIVE DATE.—

17 (1) IN GENERAL.—The amendments made by
18 this section shall apply to transactions occurring
19 after the date of the enactment of this Act.

20 (2) BINDING CONTRACTS.—The amendments
21 made by this section shall not apply to any trans-
22 action in the ordinary course of a trade or business
23 which occurs pursuant to a binding contract—

24 (A) which is between the taxpayer and a
25 person who is not a related person (as defined

1 in section ~~943(b)(3)~~ of such Code, as in effect
2 on the day before the date of the enactment of
3 this Act), and

4 (B) which is in effect on September 17,
5 2003, and at all times thereafter.

6 (d) REVOCATION OF SECTION ~~943(e)~~ ELECTIONS.—

7 (1) IN GENERAL.—In the case of a corporation
8 that elected to be treated as a domestic corporation
9 under section ~~943(e)~~ of the Internal Revenue Code
10 of 1986 (as in effect on the day before the date of
11 the enactment of this Act)—

12 (A) the corporation may, during the 1-year
13 period beginning on the date of the enactment
14 of this Act, revoke such election, effective as of
15 such date of enactment, and

16 (B) if the corporation does revoke such
17 election—

18 (i) such corporation shall be treated
19 as a domestic corporation transferring (as
20 of such date of enactment) all of its prop-
21 erty to a foreign corporation in connection
22 with an exchange described in section ~~354~~
23 of such Code, and

24 (ii) no gain or loss shall be recognized
25 on such transfer.

1 (2) ~~EXCEPTION.~~—Subparagraph (B)(ii) of
2 paragraph (1) shall not apply to gain on any asset
3 held by the revoking corporation if—

4 (A) the basis of such asset is determined
5 in whole or in part by reference to the basis of
6 such asset in the hands of the person from
7 whom the revoking corporation acquired such
8 asset,

9 (B) the asset was acquired by transfer (not
10 as a result of the election under section 943(e)
11 of such Code) occurring on or after the 1st day
12 on which its election under section 943(e) of
13 such Code was effective, and

14 (C) a principal purpose of the acquisition
15 was the reduction or avoidance of tax (other
16 than a reduction in tax under section 114 of
17 such Code, as in effect on the day before the
18 date of the enactment of this Act).

19 (e) ~~GENERAL TRANSITION.~~—

20 (1) ~~IN GENERAL.~~—In the case of a taxable year
21 ending after the date of the enactment of this Act
22 and beginning before January 1, 2007, for purposes
23 of chapter 1 of such Code, a current FSC/ETI bene-
24 ficiary shall be allowed a deduction equal to the

1 transition amount determined under this subsection
2 with respect to such beneficiary for such year.

3 (2) CURRENT FSC/ETH BENEFICIARY.—The
4 term “current FSC/ETH beneficiary” means any cor-
5 poration which entered into one or more transactions
6 during its taxable year beginning in calendar year
7 2002 with respect to which FSC/ETH benefits were
8 allowable.

9 (3) TRANSITION AMOUNT.—For purposes of
10 this subsection—

11 (A) IN GENERAL.—The transition amount
12 applicable to any current FSC/ETH beneficiary
13 for any taxable year is the phaseout percentage
14 of the base period amount.

15 (B) PHASEOUT PERCENTAGE.—

16 (i) IN GENERAL.—In the case of a
17 taxpayer using the calendar year as its
18 taxable year, the phaseout percentage shall
19 be determined under the following table:

Years:	The phaseout percentage is:
2004	80
2005	80
2006	60.

20 (ii) SPECIAL RULE FOR 2003.—The
21 phaseout percentage for 2003 shall be the
22 amount that bears the same ratio to 100
23 percent as the number of days after the

1 date of the enactment of this Act bears to
2 365.

3 (iii) ~~SPECIAL RULE FOR FISCAL YEAR~~
4 ~~TAXPAYERS.~~—In the case of a taxpayer
5 not using the calendar year as its taxable
6 year, the phaseout percentage is the
7 weighted average of the phaseout percent-
8 ages determined under the preceding provi-
9 sions of this paragraph with respect to cal-
10 endar years any portion of which is in-
11 cluded in the taxpayer's taxable year. The
12 weighted average shall be determined on
13 the basis of the respective portions of the
14 taxable year in each calendar year.

15 (4) ~~BASE PERIOD AMOUNT.~~—For purposes of
16 this subsection, the base period amount is the aggre-
17 gate FSC/ETI benefits for the taxpayer's taxable
18 year beginning in calendar year 2002.

19 (5) ~~FSC/ETI BENEFIT.~~—For purposes of this
20 subsection, the term “FSC/ETI benefit” means—

21 (A) amounts excludable from gross income
22 under section 114 of such Code; and

23 (B) the exempt foreign trade income of re-
24 lated foreign sales corporations from property
25 acquired from the taxpayer (determined without

1 regard to section 923(a)(5) of such Code (relat-
2 ing to special rule for military property), as in
3 effect on the day before the date of the enact-
4 ment of the FSC Repeal and Extraterritorial
5 Income Exclusion Act of 2000).

6 In determining the FSC/ETI benefit there shall be
7 excluded any amount attributable to a transaction
8 with respect to which the taxpayer is the lessor un-
9 less the leased property was manufactured or pro-
10 duced in whole or in part by the taxpayer.

11 (6) SPECIAL RULE FOR FARM COOPERATIVES.—
12 Determinations under this subsection with respect to
13 an organization described in section 943(g)(1) of
14 such Code, as in effect on the day before the date
15 of the enactment of this Act, shall be made at the
16 cooperative level and the purposes of this subsection
17 shall be carried out in a manner similar to section
18 250(h) of such Code, as added by this Act. Such de-
19 terminations shall be in accordance with such re-
20 quirements and procedures as the Secretary may
21 prescribe.

22 (7) CERTAIN RULES TO APPLY.—Rules similar
23 to the rules of section 41(f) of such Code shall apply
24 for purposes of this subsection.

1 (8) COORDINATION WITH BINDING CONTRACT
2 RULE.—The deduction determined under paragraph
3 (1) for any taxable year shall be reduced by the
4 phaseout percentage of any FSC/ETI benefit real-
5 ized for the taxable year by reason of subsection
6 (c)(2), except that for purposes of this paragraph
7 the phaseout percentage for 2003 shall be treated as
8 being equal to 100 percent.

9 (9) SPECIAL RULE FOR TAXABLE YEAR WHICH
10 INCLUDES DATE OF ENACTMENT.—In the case of a
11 taxable year which includes the date of the enact-
12 ment of this Act, the deduction allowed under this
13 subsection to any current FSC/ETI beneficiary shall
14 in no event exceed—

15 (A) 100 percent of such beneficiary's base
16 period amount for calendar year 2003, reduced
17 by

18 (B) the aggregate FSC/ETI benefits of
19 such beneficiary with respect to transactions oc-
20 curring during the portion of the taxable year
21 ending on the date of the enactment of this Act.

1 **SEC. 102. DEDUCTION RELATING TO INCOME ATTRIB-**
 2 **UTABLE TO UNITED STATES PRODUCTION**
 3 **ACTIVITIES.**

4 (a) **IN GENERAL.**—Part VIII of subchapter B of
 5 chapter 1 (relating to special deductions for corporations)
 6 is amended by adding at the end the following new section:

7 **“SEC. 250. INCOME ATTRIBUTABLE TO DOMESTIC PRODUC-**
 8 **TION ACTIVITIES.**

9 “(a) **IN GENERAL.**—In the case of a corporation,
 10 there shall be allowed as a deduction an amount equal to
 11 9 percent of the qualified production activities income of
 12 the corporation for the taxable year.

13 “(b) **PHASEIN.**—In the case of taxable years begin-
 14 ning in 2004, 2005, 2006, 2007, or 2008, subsection (a)
 15 shall be applied by substituting for the percentage con-
 16 tained therein the transition percentage determined under
 17 the following table:

“Taxable years beginning in:	The transition percentage is:
2004	1
2005	2
2006	3
2007 or 2008	6.

18 “(c) **QUALIFIED PRODUCTION ACTIVITIES IN-**
 19 **COME.**—For purposes of this section—

20 “(1) **IN GENERAL.**—The term ‘qualified produc-
 21 tion activities income’ means an amount equal to the
 22 applicable percentage of the portion of the modified

1 taxable income of the taxpayer which is attributable
2 to domestic production activities:

3 ~~“(2) APPLICABLE PERCENTAGE.—For purposes~~
4 ~~of this subsection, the term ‘applicable percentage’~~
5 ~~means—~~

6 ~~“(A) in the case of taxable years beginning~~
7 ~~before 2012, a percentage equal to the domes-~~
8 ~~tic/worldwide fraction,~~

9 ~~“(B) in the case of taxable years beginning~~
10 ~~in 2012, a percentage (not greater than 100~~
11 ~~percent) equal to twice the domestic/worldwide~~
12 ~~fraction, and~~

13 ~~“(C) in the case of taxable years beginning~~
14 ~~after 2012, 100 percent.~~

15 ~~“(d) DETERMINATION OF INCOME ATTRIBUTABLE~~
16 ~~TO DOMESTIC PRODUCTION ACTIVITIES.—For purposes~~
17 ~~of this section—~~

18 ~~“(1) IN GENERAL.—The portion of the modified~~
19 ~~taxable income which is attributable to domestic pro-~~
20 ~~duction activities is so much of the modified taxable~~
21 ~~income for the taxable year as does not exceed—~~

22 ~~“(A) the taxpayer’s domestic production~~
23 ~~gross receipts for such taxable year, reduced by~~

24 ~~“(B) the sum of—~~

1 “(i) the costs of goods sold that are
2 allocable to such receipts;

3 “(ii) other deductions, expenses, or
4 losses directly allocable to such receipts;
5 and

6 “(iii) a proper share of other deduc-
7 tions, expenses, and losses that are not di-
8 rectly allocable to such receipts or another
9 class of income.

10 “(2) ALLOCATION METHOD.—The Secretary
11 shall prescribe rules for the proper allocation of
12 items of income, deduction, expense, and loss for
13 purposes of determining income attributable to do-
14 mestic production activities.

15 “(3) SPECIAL RULES FOR DETERMINING
16 COSTS.—

17 “(A) IN GENERAL.—For purposes of deter-
18 mining costs under clause (i) of paragraph
19 (1)(B), any item or service brought into the
20 United States without a transfer price meeting
21 the requirements of section 482 shall be treated
22 as acquired by purchase, and its cost shall be
23 treated as not less than its value when it en-
24 tered the United States. A similar rule shall
25 apply in determining the adjusted basis of

1 leased or rented property where the lease or
2 rental gives rise to domestic production gross
3 receipts.

4 “(B) EXPORTS FOR FURTHER MANUFAC-
5 TURE.—In the case of any property described
6 in subparagraph (A) that had been exported by
7 the taxpayer for further manufacture, the in-
8 crease in cost or adjusted basis under subpara-
9 graph (A) shall not exceed the difference be-
10 tween the value of the property when exported
11 and the value of the property when brought
12 back into the United States after the further
13 manufacture.

14 “(4) MODIFIED TAXABLE INCOME.—The term
15 ‘modified taxable income’ means taxable income
16 computed without regard to the deduction allowable
17 under this section.

18 “(e) DOMESTIC PRODUCTION GROSS RECEIPTS.—
19 For purposes of this section, the term ‘domestic produc-
20 tion gross receipts’ means the gross receipts of the tax-
21 payer which are derived from—

22 “(1) any sale, exchange, or other disposition of;

23 or

24 “(2) any lease, rental, or license of;

1 qualifying production property which was manufactured,
2 produced, grown, or extracted in whole or in significant
3 part by the taxpayer within the United States.

4 “(f) QUALIFYING PRODUCTION PROPERTY.—For
5 purposes of this section—

6 “(1) IN GENERAL.—Except as otherwise pro-
7 vided in this paragraph, the term ‘qualifying produc-
8 tion property’ means—

9 “(A) any tangible personal property,

10 “(B) any computer software, and

11 “(C) any property described in section
12 168(f) (3) or (4).

13 “(2) EXCLUSIONS FROM QUALIFYING PRODUC-
14 TION PROPERTY.—The term ‘qualifying production
15 property’ shall not include—

16 “(A) consumable property that is sold,
17 leased, or licensed by the taxpayer as an inte-
18 gral part of the provision of services,

19 “(B) oil or gas (or any primary product
20 thereof),

21 “(C) electricity,

22 “(D) water supplied by pipeline to the con-
23 sumer,

24 “(E) any unprocessed timber which is
25 softwood,

1 “(F) utility services, or

2 “(G) any property (not described in para-
3 graph (1)(B)) which is a film, tape, recording,
4 book, magazine, newspaper, or similar property
5 the market for which is primarily topical or oth-
6 erwise essentially transitory in nature.

7 For purposes of subparagraph (E), the term ‘un-
8 processed timber’ means any log, cant, or similar
9 form of timber.

10 “(g) DOMESTIC/WORLDWIDE FRACTION.—For pur-
11 poses of this section—

12 “(1) IN GENERAL.—The term ‘domestic/world-
13 wide fraction’ means a fraction—

14 “(A) the numerator of which is the value
15 of the domestic production of the taxpayer, and

16 “(B) the denominator of which is the value
17 of the worldwide production of the taxpayer.

18 “(2) VALUE OF DOMESTIC PRODUCTION.—The
19 value of domestic production is the excess of—

20 “(A) the domestic production gross re-
21 ceipts, over

22 “(B) the cost of purchased inputs allocable
23 to such receipts that are deductible under this
24 chapter for the taxable year.

25 “(3) PURCHASED INPUTS.—

1 “(A) IN GENERAL.—Purchased inputs are
2 any of the following items acquired by pur-
3 chase:

4 “(i) Services (other than services of
5 employees) used in manufacture, produc-
6 tion, growth, or extraction activities.

7 “(ii) Items consumed in connection
8 with such activities.

9 “(iii) Items incorporated as part of
10 the property being manufactured, pro-
11 duced, grown, or extracted.

12 “(B) SPECIAL RULE.—Rules similar to the
13 rules of subsection (d)(3) shall apply for pur-
14 poses of this subsection.

15 “(4) VALUE OF WORLDWIDE PRODUCTION.—

16 “(A) IN GENERAL.—The value of world-
17 wide production shall be determined under the
18 principles of paragraph (2), except that—

19 “(i) worldwide production gross re-
20 ceipts shall be taken into account, and

21 “(ii) paragraph (3)(B) shall not apply.

22 “(B) WORLDWIDE PRODUCTION GROSS RE-
23 CEIPTS.—The worldwide production gross re-
24 ceipts is the amount that would be determined
25 under subsection (e) if such subsection were ap-

1 plied without any reference to the United
2 States.

3 ~~“(5) SPECIAL RULE FOR AFFILIATED~~
4 ~~GROUPS.—~~

5 ~~“(A) IN GENERAL.—In the case of a tax-~~
6 ~~payer that is a member of an expanded affili-~~
7 ~~ated group, the domestic/worldwide fraction~~
8 ~~shall be the amount determined under the pre-~~
9 ~~ceding provisions of this subsection by treating~~
10 ~~all members of such group as a single corpora-~~
11 ~~tion.~~

12 ~~“(B) EXPANDED AFFILIATED GROUP.—~~
13 ~~The term ‘expanded affiliated group’ means an~~
14 ~~affiliated group as defined in section 1504(a),~~
15 ~~determined—~~

16 ~~“(i) by substituting ‘50 percent’ for~~
17 ~~‘80 percent’ each place it appears, and~~

18 ~~“(ii) without regard to paragraphs~~
19 ~~(2), (3), (4), and (8) of section 1504(b).~~

20 ~~“(h) DEFINITIONS AND SPECIAL RULES.—~~

21 ~~“(1) EXCLUSION FOR PATRONS OF AGRICUL-~~
22 ~~TURAL AND HORTICULTURAL COOPERATIVES.—~~

23 ~~“(A) IN GENERAL.—If any amount de-~~
24 ~~scribed in paragraph (1) or (3) of section 1385~~
25 ~~(a)—~~

1 “(i) is received by a person from an
2 organization to which part I of subchapter
3 F applies which is engaged in the mar-
4 keting of agricultural or horticultural prod-
5 ucts; and

6 “(ii) is allocable to the portion of the
7 qualified production activities income of
8 the organization which is deductible under
9 subsection (a) (determined as if the organi-
10 zation were a corporation if it is not) and
11 designated as such by the organization in
12 a written notice mailed to its patrons dur-
13 ing the payment period described in section
14 1382(a);

15 then such person shall be allowed an exclusion
16 from gross income with respect to such amount.
17 The taxable income of the organization shall
18 not be reduced under section 1382 by the por-
19 tion of any such amount with respect to which
20 an exclusion is allowable to a person by reason
21 of this paragraph.

22 “(B) SPECIAL RULES.—For purposes of
23 applying subparagraph (A), in determining the
24 qualified production activities income of the or-
25 ganization under this section—

1 “(i) there shall not be taken into ac-
2 count in computing the organization’s
3 modified taxable income any deduction al-
4 lowable under subsection (b) or (c) of sec-
5 tion 1382 (relating to patronage dividends,
6 per-unit retain allocations, and nonpatron-
7 age distributions); and

8 “(ii) the organization shall be treated
9 as having manufactured, produced, grown,
10 or extracted in whole or significant part
11 any qualifying production property mar-
12 keted by the organization which its patrons
13 have so manufactured, produced, grown, or
14 extracted.

15 “(2) SPECIAL RULE FOR PARTNERSHIPS.—For
16 purposes of this section, a corporation’s distributive
17 share of any partnership item shall be taken into ac-
18 count as if directly realized by the corporation.

19 “(3) COORDINATION WITH MINIMUM TAX.—The
20 deduction under this section shall be allowed for
21 purposes of the tax imposed by section 55; except
22 that for purposes of section 55, alternative minimum
23 taxable income shall be taken into account in deter-
24 mining the deduction under this section.

1 “(4) ORDERING RULE.—The amount of any
2 other deduction allowable under this chapter shall be
3 determined as if this section had not been enacted.

4 “(5) COORDINATION WITH TRANSITION
5 RULES.—For purposes of this section—

6 “(A) domestic production gross receipts
7 shall not include gross receipts from any trans-
8 action if the binding contract transition relief of
9 section 101(e)(2) of the Jumpstart Our Busi-
10 ness Strength (JOBS) Act applies to such
11 transaction, and

12 “(B) any deduction allowed under section
13 101(e) of such Act shall be disregarded in de-
14 termining the portion of the taxable income
15 which is attributable to domestic production
16 gross receipts.”.

17 (b) DEDUCTION ALLOWED TO SHAREHOLDERS OF S
18 CORPORATIONS.—

19 (1) IN GENERAL.—Section 1363(b) (relating to
20 computation of S corporation’s taxable income) is
21 amended by striking “and” at the end of paragraph
22 (3), by striking the period at the end of paragraph
23 (4) and inserting “, and”, and by adding at the end
24 the following new paragraph:

1 **SEC. 202. LOOK-THRU RULES TO APPLY TO DIVIDENDS**
2 **FROM NONCONTROLLED SECTION 902 COR-**
3 **PORATIONS.**

4 (a) IN GENERAL.—Section 904(d)(4) (relating to
5 look-thru rules apply to dividends from noncontrolled sec-
6 tion 902 corporations) is amended to read as follows:

7 “(4) LOOK-THRU APPLIES TO DIVIDENDS FROM
8 NONCONTROLLED SECTION 902 CORPORATIONS.—

9 “(A) IN GENERAL.—For purposes of this
10 subsection, any dividend from a noncontrolled
11 section 902 corporation with respect to the tax-
12 payer shall be treated as income described in a
13 subparagraph of paragraph (1) in proportion to
14 the ratio of—

15 “(i) the portion of earnings and prof-
16 its attributable to income described in such
17 subparagraph, to

18 “(ii) the total amount of earnings and
19 profits.

20 “(B) SPECIAL RULES.—For purposes of
21 this paragraph—

22 “(i) EARNINGS AND PROFITS.—

23 “(I) IN GENERAL.—The rules of
24 section 316 shall apply.

25 “(II) REGULATIONS.—The Sec-
26 retary may prescribe regulations re-

1 regarding the treatment of distributions
2 out of earnings and profits for periods
3 before the taxpayer's acquisition of
4 the stock to which the distributions
5 relate.

6 “(ii) INADEQUATE SUBSTAN-
7 TIATION.—If the Secretary determines that
8 the proper subparagraph of paragraph (1)
9 in which a dividend is described has not
10 been substantiated, such dividend shall be
11 treated as income described in paragraph
12 (1)(A).

13 “(iii) LOOK-THRU WITH RESPECT TO
14 CARRYFORWARDS OF CREDIT.—Rules simi-
15 lar to subparagraph (A) also shall apply to
16 any carryforward under subsection (c)
17 from a taxable year beginning before Janu-
18 ary 1, 2003, of tax allocable to a dividend
19 from a noncontrolled section 902 corpora-
20 tion with respect to the taxpayer. The Sec-
21 retary may by regulations provide for the
22 allocation of any carryback of tax allocable
23 to a dividend from a noncontrolled section
24 902 corporation to such a taxable year for
25 purposes of allocating such dividend among

1 the separate categories in effect for such
2 taxable year.

3 “(iv) COORDINATION WITH HIGH-
4 TAXED INCOME PROVISIONS.—Rules simi-
5 lar to the rules of paragraph (3)(F) shall
6 apply for purposes of this paragraph.”.

7 (b) CONFORMING AMENDMENTS.—

8 (1) Section 904(d)(2)(E) is amended—

9 (A) by inserting “or (4)” after “paragraph
10 (3)” in clause (i), and

11 (B) by striking clauses (ii) and (iv) and by
12 redesignating clause (iii) as clause (ii).

13 (2) Clause (i) of section 864(d)(5)(A) is amend-
14 ed to read as follows:

15 “(i) Subclause (I) of section
16 904(d)(2)(B)(iii).”

17 (c) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to taxable years beginning after
19 December 31, 2002.

20 **SEC. 203. FOREIGN TAX CREDIT UNDER ALTERNATIVE MIN-**
21 **IMUM TAX.**

22 (a) IN GENERAL.—

23 (1) Subsection (a) of section 59 is amended by
24 striking paragraph (2) and by redesignating para-

1 graphs (3) and (4) as paragraphs (2) and (3), re-
2 spectively.

3 (2) Section 53(d)(1)(B)(i)(II) of such Code is
4 amended by striking “and if section 59(a)(2) did not
5 apply”.

6 (b) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to taxable years beginning after
8 December 31, 2004.

9 **SEC. 204. RECHARACTERIZATION OF OVERALL DOMESTIC**
10 **LOSS.**

11 (a) GENERAL RULE.—Section 904 is amended by re-
12 designating subsections (g), (h), (i), (j), and (k) as sub-
13 sections (h), (i), (j), (k), and (l) respectively, and by in-
14 serting after subsection (f) the following new subsection:

15 “(g) RECHARACTERIZATION OF OVERALL DOMESTIC
16 LOSS.—

17 “(1) GENERAL RULE.—For purposes of this
18 subpart and section 936, in the case of any taxpayer
19 who sustains an overall domestic loss for any taxable
20 year beginning after December 31, 2006, that por-
21 tion of the taxpayer’s taxable income from sources
22 within the United States for each succeeding taxable
23 year which is equal to the lesser of—

1 “(A) the amount of such loss (to the extent
2 not used under this paragraph in prior taxable
3 years); or

4 “(B) 50 percent of the taxpayer’s taxable
5 income from sources within the United States
6 for such succeeding taxable year;

7 shall be treated as income from sources without the
8 United States (and not as income from sources with-
9 in the United States).

10 “(2) OVERALL DOMESTIC LOSS DEFINED.—For
11 purposes of this subsection—

12 “(A) IN GENERAL.—The term ‘overall do-
13 mestic loss’ means any domestic loss to the ex-
14 tent such loss offsets taxable income from
15 sources without the United States for the tax-
16 able year or for any preceding taxable year by
17 reason of a carryback. For purposes of the pre-
18 ceding sentence, the term ‘domestic loss’ means
19 the amount by which the gross income for the
20 taxable year from sources within the United
21 States is exceeded by the sum of the deductions
22 properly apportioned or allocated thereto (deter-
23 mined without regard to any carryback from a
24 subsequent taxable year).

1 “(B) TAXPAYER MUST HAVE ELECTED
2 FOREIGN TAX CREDIT FOR YEAR OF LOSS.—
3 The term ‘overall domestic loss’ shall not in-
4 clude any loss for any taxable year unless the
5 taxpayer chose the benefits of this subpart for
6 such taxable year.

7 “(3) CHARACTERIZATION OF SUBSEQUENT IN-
8 COME.—

9 “(A) IN GENERAL.—Any income from
10 sources within the United States that is treated
11 as income from sources without the United
12 States under paragraph (1) shall be allocated
13 among and increase the income categories in
14 proportion to the loss from sources within the
15 United States previously allocated to those in-
16 come categories.

17 “(B) INCOME CATEGORY.—For purposes of
18 this paragraph, the term ‘income category’ has
19 the meaning given such term by subsection
20 (f)(5)(E)(i).

21 “(4) COORDINATION WITH SUBSECTION (f).—
22 The Secretary shall prescribe such regulations as
23 may be necessary to coordinate the provisions of this
24 subsection with the provisions of subsection (f).”

25 (b) CONFORMING AMENDMENTS.—

1 (1) Section 535(d)(2) is amended by striking
2 “section 904(g)(6)” and inserting “section
3 904(h)(6)”.

4 (2) Subparagraph (A) of section 936(a)(2) is
5 amended by striking “section 904(f)” and inserting
6 “subsections (f) and (g) of section 904”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to losses for taxable years begin-
9 ning after December 31, 2006.

10 **SEC. 205. INTEREST EXPENSE ALLOCATION RULES.**

11 (a) ELECTION TO ALLOCATE ON WORLDWIDE
12 BASIS.— Section 864 is amended by redesignating sub-
13 section (f) as subsection (g) and by inserting after sub-
14 section (e) the following new subsection:

15 “(f) ELECTION TO ALLOCATE INTEREST, ETC. ON
16 WORLDWIDE BASIS.—For purposes of this subchapter, at
17 the election of the worldwide affiliated group—

18 “(1) ALLOCATION AND APPORTIONMENT OF IN-
19 TEREST EXPENSE.—

20 “(A) IN GENERAL.—The taxable income of
21 each domestic corporation which is a member of
22 a worldwide affiliated group shall be determined
23 by allocating and apportioning interest expense
24 of each member as if all members of such group
25 were a single corporation.

1 “(B) TREATMENT OF WORLDWIDE AFFILI-
2 ATED GROUP.—The taxable income of the do-
3 mestic members of a worldwide affiliated group
4 from sources outside the United States shall be
5 determined by allocating and apportioning the
6 interest expense of such domestic members to
7 such income in an amount equal to the excess
8 (if any) of—

9 “(i) the total interest expense of the
10 worldwide affiliated group multiplied by
11 the ratio which the foreign assets of the
12 worldwide affiliated group bears to all the
13 assets of the worldwide affiliated group;
14 over

15 “(ii) the interest expense of all foreign
16 corporations which are members of the
17 worldwide affiliated group to the extent
18 such interest expense of such foreign cor-
19 porations would have been allocated and
20 apportioned to foreign source income if
21 this subsection were applied to a group
22 consisting of all the foreign corporations in
23 such worldwide affiliated group.

24 “(C) WORLDWIDE AFFILIATED GROUP.—

25 For purposes of this paragraph, the term

1 ‘worldwide affiliated group’ means a group con-
2 sisting of—

3 “(i) the includible members of an af-
4 filiated group (as defined in section
5 1504(a), determined without regard to
6 paragraphs (2) and (4) of section
7 1504(b)); and

8 “(ii) all controlled foreign corpora-
9 tions in which such members in the aggre-
10 gate meet the ownership requirements of
11 section 1504(a)(2) either directly or indi-
12 rectly through applying paragraph (2) of
13 section 958(a) or through applying rules
14 similar to the rules of such paragraph to
15 stock owned directly or indirectly by do-
16 mestic partnerships, trusts, or estates.

17 “(2) ALLOCATION AND APPORTIONMENT OF
18 OTHER EXPENSES.—Expenses other than interest
19 which are not directly allocable or apportioned to
20 any specific income producing activity shall be allo-
21 cated and apportioned as if all members of the affili-
22 ated group were a single corporation. For purposes
23 of the preceding sentence, the term ‘affiliated group’
24 has the meaning given such term by section 1504

1 (determined without regard to paragraph (4) of sec-
2 tion 1504(b)).

3 “(3) TREATMENT OF TAX-EXEMPT ASSETS;
4 BASIS OF STOCK IN NONAFFILIATED 10-PERCENT
5 OWNED CORPORATIONS.—The rules of paragraphs
6 (3) and (4) of subsection (c) shall apply for purposes
7 of this subsection; except that paragraph (4) shall be
8 applied on worldwide affiliated group basis.

9 “(4) TREATMENT OF CERTAIN FINANCIAL IN-
10 STITUTIONS.—

11 “(A) IN GENERAL.—For purposes of para-
12 graph (1), any corporation described in sub-
13 paragraph (B) shall be treated as an includible
14 corporation for purposes of section 1504 only
15 for purposes of applying this subsection sepa-
16 rately to corporations so described.

17 “(B) DESCRIPTION.—A corporation is de-
18 scribed in this subparagraph if—

19 “(i) such corporation is a financial in-
20 stitution described in section 581 or 591,

21 “(ii) the business of such financial in-
22 stitution is predominantly with persons
23 other than related persons (within the
24 meaning of subsection (d)(4)) or their cus-
25 tomers; and

1 “(iii) such financial institution is re-
2 quired by State or Federal law to be oper-
3 ated separately from any other entity
4 which is not such an institution.

5 “(C) TREATMENT OF BANK AND FINAN-
6 CIAL HOLDING COMPANIES.—To the extent pro-
7 vided in regulations—

8 “(i) a bank holding company (within
9 the meaning of section 2(a) of the Bank
10 Holding Company Act of 1956),

11 “(ii) a financial holding company
12 (within the meaning of section 2(p) of the
13 Bank Holding Company Act of 1956), and

14 “(iii) any subsidiary of a financial in-
15 stitution described in section 581 or 591,
16 or of any such bank or financial holding
17 company, if such subsidiary is predomi-
18 nantly engaged (directly or indirectly) in
19 the active conduct of a banking, financing,
20 or similar business,

21 shall be treated as a corporation described in
22 subparagraph (B).

23 “(5) ELECTION TO EXPAND FINANCIAL INSTI-
24 TUTION GROUP OF WORLDWIDE GROUP.—

1 “(A) IN GENERAL.—If a worldwide affili-
2 ated group elects the application of this sub-
3 section, all financial corporations which—

4 “(i) are members of such worldwide
5 affiliated group, but

6 “(ii) are not corporations described in
7 paragraph (4)(B),

8 shall be treated as described in paragraph
9 (4)(B) for purposes of applying paragraph
10 (4)(A). This subsection (other than this para-
11 graph) shall apply to any such group in the
12 same manner as this subsection (other than this
13 paragraph) applies to the pre-election worldwide
14 affiliated group of which such group is a part.

15 “(B) FINANCIAL CORPORATION.—For pur-
16 poses of this paragraph, the term ‘financial cor-
17 poration’ means any corporation if at least 80
18 percent of its gross income is income described
19 in section 904(d)(2)(D)(ii) and the regulations
20 thereunder which is derived from transactions
21 with persons who are not related (within the
22 meaning of section 267(b) or 707(b)(1)) to the
23 corporation. For purposes of the preceding sen-
24 tence, there shall be disregarded any item of in-
25 come or gain from a transaction or series of

1 transactions a principal purpose of which is the
2 qualification of any corporation as a financial
3 corporation.

4 “(C) ANTIABUSE RULES.—In the case of a
5 corporation which is a member of an electing fi-
6 nancial institution group, to the extent that
7 such corporation—

8 “(i) distributes dividends or makes
9 other distributions with respect to its stock
10 after the date of the enactment of this
11 paragraph to any member of the pre-elec-
12 tion worldwide affiliated group (other than
13 to a member of the electing financial insti-
14 tution group) in excess of the greater of—

15 “(I) its average annual dividend
16 (expressed as a percentage of current
17 earnings and profits) during the 5-
18 taxable-year period ending with the
19 taxable year preceding the taxable
20 year, or

21 “(II) 25 percent of its average
22 annual earnings and profits for such
23 5-taxable-year period, or

24 “(ii) deals with any person in any
25 manner not clearly reflecting the income of

1 the corporation (as determined under prin-
2 ciples similar to the principles of section
3 482),
4 an amount of indebtedness of the electing fi-
5 nancial institution group equal to the excess
6 distribution or the understatement or overstate-
7 ment of income, as the case may be, shall be re-
8 characterized (for the taxable year and subse-
9 quent taxable years) for purposes of this para-
10 graph as indebtedness of the worldwide affili-
11 ated group (excluding the electing financial in-
12 stitution group). If a corporation has not been
13 in existence for 5 taxable years, this subpara-
14 graph shall be applied with respect to the pe-
15 riod it was in existence.

16 “(D) ELECTION.—An election under this
17 paragraph with respect to any financial institu-
18 tion group may be made only by the common
19 parent of the pre-election worldwide affiliated
20 group and may be made only for the first tax-
21 able year beginning after December 31, 2009,
22 in which such affiliated group includes 1 or
23 more financial corporations. Such an election,
24 once made, shall apply to all financial corpora-
25 tions which are members of the electing finan-

1 cial institution group for such taxable year and
2 all subsequent years unless revoked with the
3 consent of the Secretary.

4 “(E) DEFINITIONS RELATING TO
5 GROUPS.—For purposes of this paragraph—

6 “(i) PRE-ELECTION WORLDWIDE AF-
7 FILIATED GROUP.—The term ‘pre-election
8 worldwide affiliated group’ means, with re-
9 spect to a corporation, the worldwide affili-
10 ated group of which such corporation
11 would (but for an election under this para-
12 graph) be a member for purposes of apply-
13 ing paragraph (1).

14 “(ii) ELECTING FINANCIAL INSTITU-
15 TION GROUP.—The term ‘electing financial
16 institution group’ means the group of cor-
17 porations to which this subsection applies
18 separately by reason of the application of
19 paragraph (4)(A) and which includes fi-
20 nancial corporations by reason of an elec-
21 tion under subparagraph (A).

22 “(F) REGULATIONS.—The Secretary shall
23 prescribe such regulations as may be appro-
24 priate to carry out this subsection, including
25 regulations—

1 “(i) providing for the direct allocation
2 of interest expense in other circumstances
3 where such allocation would be appropriate
4 to carry out the purposes of this sub-
5 section;

6 “(ii) preventing assets or interest ex-
7 pense from being taken into account more
8 than once; and

9 “(iii) dealing with changes in mem-
10 bers of any group (through acquisitions or
11 otherwise) treated under this paragraph as
12 an affiliated group for purposes of this
13 subsection.

14 “(6) ELECTION.—An election to have this sub-
15 section apply with respect to any worldwide affiliated
16 group may be made only by the common parent of
17 the domestic affiliated group referred to in para-
18 graph (1)(C) and may be made only for the first
19 taxable year beginning after December 31, 2009, in
20 which a worldwide affiliated group exists which in-
21 cludes such affiliated group and at least one foreign
22 corporation. Such an election, once made, shall apply
23 to such common parent and all other corporations
24 which are members of such worldwide affiliated

1 group for such taxable year and all subsequent years
2 unless revoked with the consent of the Secretary.”.

3 (b) **EXPANSION OF REGULATORY AUTHORITY.**—

4 Paragraph (7) of section 864(e) is amended—

5 (1) by inserting before the comma at the end of
6 subparagraph (B) “and in other circumstances
7 where such allocation would be appropriate to carry
8 out the purposes of this subsection”, and

9 (2) by striking “and” at the end of subpara-
10 graph (E), by redesignating subparagraph (F) as
11 subparagraph (G), and by inserting after subpara-
12 graph (E) the following new subparagraph:

13 “(F) preventing assets or interest expense
14 from being taken into account more than once,
15 and”.

16 (c) **EFFECTIVE DATE.**—The amendments made by
17 this section shall apply to taxable years beginning after
18 December 31, 2009.

19 **SEC. 206. DETERMINATION OF FOREIGN PERSONAL HOLD-**
20 **ING COMPANY INCOME WITH RESPECT TO**
21 **TRANSACTIONS IN COMMODITIES.**

22 (a) **IN GENERAL.**—Clauses (i) and (ii) of section
23 954(e)(1)(C) (relating to commodity transactions) are
24 amended to read as follows:

1 “(i) arise out of commodity hedging
2 transactions (as defined in paragraph
3 (6)(A));

4 “(ii) are active business gains or
5 losses from the sale of commodities, but
6 only if substantially all of the controlled
7 foreign corporation’s commodities are
8 property described in paragraph (1), (2),
9 or (8) of section 1221(a), or”.

10 (b) DEFINITION AND SPECIAL RULES.—Subsection
11 (e) of section 954 is amended by adding after paragraph
12 (5) the following new paragraph:

13 “(6) DEFINITION AND SPECIAL RULES RELAT-
14 ING TO COMMODITY TRANSACTIONS.—

15 “(A) COMMODITY HEDGING TRANS-
16 ACTIONS.—For purposes of paragraph
17 (1)(C)(i), the term ‘commodity hedging trans-
18 action’ means any transaction with respect to a
19 commodity if such transaction—

20 “(i) is a hedging transaction as de-
21 fined in section 1221(b)(2), determined—

22 “(I) without regard to subpara-
23 graph (A)(ii) thereof,

24 “(II) by applying subparagraph
25 (A)(i) thereof by substituting ‘ordi-

1 nary property or property described in
2 section 1231(b)' for 'ordinary prop-
3 erty', and

4 “(III) by substituting ‘controlled
5 foreign corporation’ for ‘taxpayer’
6 each place it appears, and

7 “(ii) is clearly identified as such in ac-
8 cordance with section 1221(a)(7).

9 “(B) REGULATIONS.—The Secretary shall
10 prescribe such regulations as are appropriate to
11 carry out the purposes of paragraph (1)(C) in
12 the case of transactions involving related par-
13 ties.”

14 (e) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to transactions entered into after
16 December 31, 2004.

17 **Subtitle B—International Tax**

18 **Simplification**

19 **SEC. 211. REPEAL OF FOREIGN PERSONAL HOLDING COM-**

20 **PANY RULES AND FOREIGN INVESTMENT**

21 **COMPANY RULES.**

22 (a) GENERAL RULE.—The following provisions are
23 hereby repealed:

24 (1) Part III of subchapter G of chapter 1 (re-
25 lating to foreign personal holding companies).

1 ~~(2) Section 1246 (relating to gain on foreign in-~~
2 ~~vestment company stock).~~

3 ~~(3) Section 1247 (relating to election by foreign~~
4 ~~investment companies to distribute income cur-~~
5 ~~rently).~~

6 ~~(b) EXEMPTION OF FOREIGN CORPORATIONS FROM~~
7 ~~PERSONAL HOLDING COMPANY RULES.—~~

8 ~~(1) IN GENERAL.—~~Subsection (e) of section
9 ~~542 (relating to exceptions) is amended—~~

10 ~~(A) by striking paragraph (5) and insert-~~
11 ~~ing the following:~~

12 ~~“(5) a foreign corporation,”;~~

13 ~~(B) by striking paragraphs (7) and (10)~~
14 ~~and by redesignating paragraphs (8) and (9) as~~
15 ~~paragraphs (7) and (8), respectively;~~

16 ~~(C) by inserting “and” at the end of para-~~
17 ~~graph (7) (as so redesignated), and~~

18 ~~(D) by striking “; and” at the end of para-~~
19 ~~graph (8) (as so redesignated) and inserting a~~
20 ~~period.~~

21 ~~(2) TREATMENT OF INCOME FROM PERSONAL~~
22 ~~SERVICE CONTRACTS.—~~Paragraph (1) of section
23 ~~954(e) is amended by adding at the end the fol-~~
24 ~~lowing new subparagraph:~~

25 ~~“(I) PERSONAL SERVICE CONTRACTS.—~~

1 “(i) Amounts received under a con-
2 tract under which the corporation is to fur-
3 nish personal services if—

4 “(I) some person other than the
5 corporation has the right to designate
6 (by name or by description) the indi-
7 vidual who is to perform the services;
8 or

9 “(II) the individual who is to per-
10 form the services is designated (by
11 name or by description) in the con-
12 tract; and

13 “(ii) amounts received from the sale
14 or other disposition of such a contract.

15 This subparagraph shall apply with respect to
16 amounts received for services under a particular
17 contract only if at some time during the taxable
18 year 25 percent or more in value of the out-
19 standing stock of the corporation is owned, di-
20 rectly or indirectly, by or for the individual who
21 has performed, is to perform, or may be des-
22 ignated (by name or by description) as the one
23 to perform, such services.”

24 (c) CONFORMING AMENDMENTS.—

25 (1) Section 1(h) is amended—

1 (A) in paragraph (10), by inserting “and”
2 at the end of subparagraph (F), by striking
3 subparagraph (G), and by redesignating sub-
4 paragraph (H) as subparagraph (G), and

5 (B) by striking “a foreign personal holding
6 company (as defined in section 552), a foreign
7 investment company (as defined in section
8 1246(b)), or” in paragraph (11)(C)(iii).

9 (2) Paragraph (2) of section 171(e) is
10 amended—

11 (A) by striking “, or by a foreign personal
12 holding company, as defined in section 552”,
13 and

14 (B) by striking “, or foreign personal hold-
15 ing company”.

16 (3) Paragraph (2) of section 245(a) is amended
17 by striking “foreign personal holding company or”.

18 (4) Section 312 is amended by striking sub-
19 section (j).

20 (5) Subsection (m) of section 312 is amended
21 by striking “, a foreign investment company (within
22 the meaning of section 1246(b)), or a foreign per-
23 sonal holding company (within the meaning of sec-
24 tion 552)”.

1 (6) Subsection (e) of section 443 is amended by
2 striking paragraph (3) and by redesignating para-
3 graphs (4) and (5) as paragraphs (3) and (4), re-
4 spectively.

5 (7) Subparagraph (B) of section 465(e)(7) is
6 amended by adding “or” at the end of clause (i); by
7 striking clause (ii); and by redesignating clause (iii)
8 as clause (ii).

9 (8) Paragraph (1) of section 543(b) is amended
10 by inserting “and” at the end of subparagraph (A);
11 by striking “, and” at the end of subparagraph (B)
12 and inserting a period; and by striking subparagraph
13 (C).

14 (9) Paragraph (1) of section 562(b) is amended
15 by striking “or a foreign personal holding company
16 described in section 552”.

17 (10) Section 563 is amended—

18 (A) by striking subsection (e);

19 (B) by redesignating subsection (d) as sub-
20 section (e); and

21 (C) by striking “subsection (a), (b), or (e)”
22 in subsection (e) (as so redesignated) and in-
23 serting “subsection (a) or (b)”.

24 (11) Subsection (d) of section 751 is amended
25 by adding “and” at the end of paragraph (2); by

1 striking paragraph (3), by redesignating paragraph
2 (4) as paragraph (3), and by striking “paragraph
3 (1), (2), or (3)” in paragraph (3) (as so redesign-
4 dated) and inserting “paragraph (1) or (2)”.

5 (12) Paragraph (2) of section 864(d) is amend-
6 ed by striking subparagraph (A) and by redesign-
7 ating subparagraphs (B) and (C) as subparagraphs
8 (A) and (B), respectively.

9 (13)(A) Subparagraph (A) of section 898(b)(1)
10 is amended to read as follows:

11 “(A) which is treated as a controlled for-
12 eign corporation for any purpose under subpart
13 F of part III of this subchapter, and”.

14 (B) Subparagraph (B) of section 898(b)(2) is
15 amended by striking “and sections 551(f) and 554,
16 whichever are applicable,”.

17 (C) Paragraph (3) of section 898(b) is amended
18 to read as follows:

19 “(3) UNITED STATES SHAREHOLDER.—The
20 term ‘United States shareholder’ has the meaning
21 given to such term by section 951(b), except that, in
22 the case of a foreign corporation having related per-
23 son insurance income (as defined in section
24 953(c)(2)), the Secretary may treat any person as a
25 United States shareholder for purposes of this sec-

1 tion if such person is treated as a United States
2 shareholder under section 953(e)(1).”

3 (D) Subsection (e) of section 898 is amended to
4 read as follows:

5 “(e) DETERMINATION OF REQUIRED YEAR.—

6 “(1) IN GENERAL.—The required year is—

7 “(A) the majority U.S. shareholder year,
8 or

9 “(B) if there is no majority U.S. share-
10 holder year, the taxable year prescribed under
11 regulations.

12 “(2) 1-MONTH DEFERRAL ALLOWED.—A speci-
13 fied foreign corporation may elect, in lieu of the tax-
14 able year under paragraph (1)(A), a taxable year be-
15 ginning 1 month earlier than the majority U.S.
16 shareholder year.

17 “(3) MAJORITY U.S. SHAREHOLDER YEAR.—

18 “(A) IN GENERAL.—For purposes of this
19 subsection, the term ‘majority U.S. shareholder
20 year’ means the taxable year (if any) which, on
21 each testing day, constituted the taxable year
22 of—

23 “(i) each United States shareholder
24 described in subsection (b)(2)(A), and

1 “(ii) each United States shareholder
2 not described in clause (i) whose stock was
3 treated as owned under subsection
4 (b)(2)(B) by any shareholder described in
5 such clause.

6 “(B) TESTING DAY.—The testing days
7 shall be—

8 “(i) the first day of the corporation’s
9 taxable year (determined without regard to
10 this section), or

11 “(ii) the days during such representa-
12 tive period as the Secretary may pre-
13 scribe.”

14 (14) Clause (ii) of section 904(d)(2)(A) is
15 amended to read as follows:

16 “(ii) CERTAIN AMOUNTS INCLUDED.—
17 Except as provided in clause (iii), the term
18 ‘passive income’ includes, except as pro-
19 vided in subparagraph (E)(iii) or para-
20 graph (3)(I), any amount includible in
21 gross income under section 1293 (relating
22 to certain passive foreign investment com-
23 panies).”

24 (15)(A) Subparagraph (A) of section 904(g)(1),
25 as redesignated by section 204, is amended by add-

1 ing “or” at the end of clause (i), by striking clause
2 (ii), and by redesignating clause (iii) as clause (ii).

3 (B) The paragraph heading of paragraph (2) of
4 section 904(g), as so redesignated, is amended by
5 striking “FOREIGN PERSONAL HOLDING OR”.

6 (16) Section 951 is amended by striking sub-
7 sections (e) and (d) and by redesignating subsections
8 (e) and (f) as subsections (e) and (d), respectively.

9 (17) Paragraph (3) of section 989(b) is amend-
10 ed by striking “, 551(a),”.

11 (18) Paragraph (5) of section 1014(b) is
12 amended by inserting “and before January 1,
13 2005,” after “August 26, 1937,”.

14 (19) Subsection (a) of section 1016 is amended
15 by striking paragraph (13).

16 (20)(A) Paragraph (3) of section 1212(a) is
17 amended to read as follows:

18 “(3) SPECIAL RULES ON CARRYBACKS.—A net
19 capital loss of a corporation shall not be carried
20 back under paragraph (1)(A) to a taxable year—

21 “(A) for which it is a regulated investment
22 company (as defined in section 851); or

23 “(B) for which it is a real estate invest-
24 ment trust (as defined in section 856).”

1 ~~(B)~~ The amendment made by subparagraph (A)
2 shall apply to taxable years beginning after Decem-
3 ber ~~31, 2004~~.

4 ~~(21)~~ Section ~~1223~~ is amended by striking para-
5 graph (10) and by redesignating the following para-
6 graphs accordingly.

7 ~~(22)~~ Subsection (d) of section ~~1248~~ is amended
8 by striking paragraph (5) and by redesignating
9 paragraphs (6) and (7) as paragraphs (5) and (6),
10 respectively.

11 ~~(23)~~ Paragraph (2) of section ~~1260(e)~~ is
12 amended by striking subparagraphs (H) and (I) and
13 by redesignating subparagraph (J) as subparagraph
14 (H).

15 ~~(24)(A)~~ Subparagraph (F) of section
16 ~~1291(b)(3)~~ is amended by striking “~~551(d), 959(a),~~”
17 and inserting “~~959(a)~~”.

18 ~~(B)~~ Subsection (e) of section ~~1291~~ is amended
19 by inserting “(as in effect on the day before the date
20 of the enactment of the Jumpstart Our Business
21 Strength (JOBS) Act)” after “~~section 1246~~”.

22 ~~(25)~~ Paragraph (2) of section ~~1294(a)~~ is
23 amended to read as follows:

24 “~~(2) ELECTION NOT PERMITTED WHERE~~
25 ~~AMOUNTS OTHERWISE INCLUDIBLE UNDER SECTION~~

1 951.—The taxpayer may not make an election under
2 paragraph (1) with respect to the undistributed
3 PFIC earnings tax liability attributable to a quali-
4 fied electing fund for the taxable year if any amount
5 is includible in the gross income of the taxpayer
6 under section 951 with respect to such fund for such
7 taxable year.”

8 (26) Section 6035 is hereby repealed.

9 (27) Subparagraph (D) of section 6103(e)(1) is
10 amended by striking clause (iv) and redesignating
11 clauses (v) and (vi) as clauses (iv) and (v), respec-
12 tively.

13 (28) Subparagraph (B) of section 6501(e)(1) is
14 amended to read as follows:

15 “(B) CONSTRUCTIVE DIVIDENDS.—If the
16 taxpayer omits from gross income an amount
17 properly includible therein under section
18 951(a), the tax may be assessed, or a pro-
19 ceeding in court for the collection of such tax
20 may be done without assessing, at any time
21 within 6 years after the return was filed.”

22 (29) Subsection (a) of section 6679 is
23 amended—

1 (A) by striking “6035, 6046, and 6046A”
2 in paragraph (1) and inserting “6046 and
3 6046A”, and

4 (B) by striking paragraph (3).

5 (30) Sections 170(f)(10)(A), 508(d), 4947, and
6 4948(e)(4) are each amended by striking
7 “556(b)(2),” each place it appears.

8 (31) The table of parts for subchapter G of
9 chapter 1 is amended by striking the item relating
10 to part III.

11 (32) The table of sections for part IV of sub-
12 chapter P of chapter 1 is amended by striking the
13 items relating to sections 1246 and 1247.

14 (33) The table of sections for subpart A of part
15 III of subchapter A of chapter 61 is amended by
16 striking the item relating to section 6035.

17 (d) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to taxable years of foreign corpora-
19 tions beginning after December 31, 2004, and taxable
20 years of United States shareholders of such corporations
21 ending with or within such taxable years of such corpora-
22 tions.

1 **SEC. 212. EXPANSION OF DE MINIMIS RULE UNDER SUB-**
2 **PART F.**

3 (a) **IN GENERAL.**—Clause (ii) of section
4 954(b)(3)(A) (relating to de minimis, etc., rules) is
5 amended by striking “\$1,000,000” and inserting
6 “\$5,000,000”.

7 (b) **TECHNICAL AMENDMENTS.**—

8 (1) Clause (ii) of section 864(d)(5)(A) is
9 amended by striking “\$1,000,000” and inserting
10 “\$5,000,000”.

11 (2) Clause (i) of section 881(e)(5)(A) is amend-
12 ed by striking “\$1,000,000” and inserting
13 “\$5,000,000”.

14 (c) **EFFECTIVE DATE.**—The amendments made by
15 this section shall apply to taxable years of foreign corpora-
16 tions beginning after December 31, 2004, and taxable
17 years of United States shareholders of such corporations
18 ending with or within such taxable years of such corpora-
19 tions.

20 **SEC. 213. ATTRIBUTION OF STOCK OWNERSHIP THROUGH**
21 **PARTNERSHIPS TO APPLY IN DETERMINING**
22 **SECTION 902 AND 960 CREDITS.**

23 (a) **IN GENERAL.**—Subsection (c) of section 902 is
24 amended by redesignating paragraph (7) as paragraph (8)
25 and by inserting after paragraph (6) the following new
26 paragraph:

1 “(7) CONSTRUCTIVE OWNERSHIP THROUGH
2 PARTNERSHIPS.—Stock owned, directly or indirectly,
3 by or for a partnership shall be considered as being
4 owned proportionately by its partners. Stock consid-
5 ered to be owned by a person by reason of the pre-
6 ceeding sentence shall, for purposes of applying such
7 sentence, be treated as actually owned by such per-
8 son. The Secretary may prescribe such regulations
9 as may be necessary to carry out the purposes of
10 this paragraph, including rules to account for special
11 partnership allocations of dividends, credits, and
12 other incidents of ownership of stock in determining
13 proportionate ownership.”

14 (b) CLARIFICATION OF COMPARABLE CONTRIBUTION
15 UNDER SECTION 901(b)(5).—Paragraph (5) of section
16 901(b) is amended by striking “any individual” and in-
17 serting “any person”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to taxes of foreign corporations
20 for taxable years of such corporations beginning after the
21 date of the enactment of this Act.

1 **SEC. 214. APPLICATION OF UNIFORM CAPITALIZATION**
2 **RULES TO FOREIGN PERSONS.**

3 (a) **IN GENERAL.**—Section 263A(c) (relating to ex-
4 ceptions) is amended by adding at the end the following
5 new paragraph:

6 “(7) **FOREIGN PERSONS.**—Except for purposes
7 of applying sections 871(b)(1) and 882(a)(1), this
8 section shall not apply to any taxpayer who is not
9 a United States person if such taxpayer capitalizes
10 costs of produced property or property acquired for
11 resale by applying the method used to ascertain the
12 income, profit, or loss for purposes of reports or
13 statements to shareholders, partners, other propri-
14 etors, or beneficiaries, or for credit purposes.”

15 (b) **EFFECTIVE DATE.**—

16 (1) **IN GENERAL.**—The amendment made by
17 subsection (a) shall apply to taxable years beginning
18 after December 31, 2004.

19 (2) **CHANGE IN METHOD OF ACCOUNTING.**—In
20 the case of any taxpayer required by the amendment
21 made by this section to change its method of ac-
22 counting for its first taxable year beginning after
23 December 31, 2004—

24 (A) such change shall be treated as initi-
25 ated by the taxpayer,

1 (B) such change shall be treated as made
2 with the consent of the Secretary of the Treas-
3 ury; and

4 (C) the net amount of the adjustments re-
5 quired to be taken into account by the taxpayer
6 under section 481 of the Internal Revenue Code
7 of 1986 shall be taken into account in such first
8 year.

9 **SEC. 215. REPEAL OF WITHHOLDING TAX ON DIVIDENDS**
10 **FROM CERTAIN FOREIGN CORPORATIONS.**

11 (a) **IN GENERAL.**—Paragraph (2) of section 871(i)
12 (relating to tax not to apply to certain interest and divi-
13 dends) is amended by adding at the end the following new
14 subparagraph:

15 “(D) Dividends paid by a foreign corpora-
16 tion which are treated under section
17 861(a)(2)(B) as income from sources within the
18 United States.”.

19 (b) **EFFECTIVE DATE.**—The amendment made by
20 this section shall apply to payments made after December
21 31, 2004.

1 **SEC. 216. REPEAL OF SPECIAL CAPITAL GAINS TAX ON**
 2 **ALIENS PRESENT IN THE UNITED STATES**
 3 **FOR 183 DAYS OR MORE.**

4 (a) **IN GENERAL.**—Subsection (a) of section 871 is
 5 amended by striking paragraph (2) and by redesignating
 6 paragraph (3) as paragraph (2).

7 (b) **EFFECTIVE DATE.**—The amendment made by
 8 this section shall apply to taxable years beginning after
 9 December 31, 2003.

10 **SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE;**
 11 **TABLE OF CONTENTS.**

12 (a) **SHORT TITLE.**—*This Act may be cited as the*
 13 *“Jumpstart Our Business Strength (JOBS) Act”.*

14 (b) **AMENDMENT OF 1986 CODE.**—*Except as otherwise*
 15 *expressly provided, whenever in this Act an amendment or*
 16 *repeal is expressed in terms of an amendment to, or repeal*
 17 *of, a section or other provision, the reference shall be consid-*
 18 *ered to be made to a section or other provision of the Inter-*
 19 *nal Revenue Code of 1986.*

20 (c) **TABLE OF CONTENTS.**—

Sec. 1. Short title; amendment of 1986 Code; table of contents.

**TITLE I—PROVISIONS RELATING TO REPEAL OF EXCLUSION FOR
 EXTRATERRITORIAL INCOME**

Sec. 101. Repeal of exclusion for extraterritorial income.

*Sec. 102. Deduction relating to income attributable to United States production
 activities.*

TITLE II—INTERNATIONAL TAX PROVISIONS

Subtitle A—International Tax Reform

- Sec. 201. 20-year foreign tax credit carryover; 1-year foreign tax credit carryback.*
- Sec. 202. Look-thru rules to apply to dividends from noncontrolled section 902 corporations.*
- Sec. 203. Foreign tax credit under alternative minimum tax.*
- Sec. 204. Recharacterization of overall domestic loss.*
- Sec. 205. Interest expense allocation rules.*
- Sec. 206. Determination of foreign personal holding company income with respect to transactions in commodities.*

Subtitle B—International Tax Simplification

- Sec. 211. Repeal of foreign personal holding company rules and foreign investment company rules.*
- Sec. 212. Expansion of de minimis rule under subpart F.*
- Sec. 213. Attribution of stock ownership through partnerships to apply in determining section 902 and 960 credits.*
- Sec. 214. Application of uniform capitalization rules to foreign persons.*
- Sec. 215. Repeal of withholding tax on dividends from certain foreign corporations.*
- Sec. 216. Repeal of special capital gains tax on aliens present in the United States for 183 days or more.*

Subtitle C—Additional International Tax Provisions

- Sec. 221. Active leasing income from aircraft and vessels.*
- Sec. 222. Look-thru treatment of payments between related controlled foreign corporations under foreign personal holding company income rules.*
- Sec. 223. Look-thru treatment for sales of partnership interests.*
- Sec. 224. Election not to use average exchange rate for foreign tax paid other than in functional currency.*
- Sec. 225. Treatment of income tax base differences.*
- Sec. 226. Modification of exceptions under subpart F for active financing.*
- Sec. 227. United States property not to include certain assets of controlled foreign corporation.*
- Sec. 228. Provide equal treatment for interest paid by foreign partnerships and foreign corporations.*
- Sec. 229. Clarification of treatment of certain transfers of intangible property.*
- Sec. 230. Modification of the treatment of certain REIT distributions attributable to gain from sales or exchanges of United States real property interests.*
- Sec. 231. Toll tax on excess qualified foreign distribution amount.*
- Sec. 232. Exclusion of income derived from certain wagers on horse races and dog races from gross income of nonresident alien individuals.*
- Sec. 233. Exception to withholding tax for Puerto Rico corporations.*
- Sec. 234. Report on WTO dispute settlement panels and the appellate body.*
- Sec. 235. Study of impact of international tax laws on taxpayers other than large corporations.*
- Sec. 236. Consultative role for Senate Committee on Finance in connection with the review of proposed tax treaties.*

*TITLE III—DOMESTIC MANUFACTURING AND BUSINESS PROVISIONS**Subtitle A—General Provisions*

- Sec. 301. Expansion of qualified small-issue bond program.*
- Sec. 302. Expensing of broadband Internet access expenditures.*
- Sec. 303. Exemption of natural aging process in determination of production period for distilled spirits under section 263A.*
- Sec. 304. Modification of active business definition under section 355.*
- Sec. 305. Exclusion of certain indebtedness of small business investment companies from acquisition indebtedness.*
- Sec. 306. Modified taxation of imported archery products.*
- Sec. 307. Modification to cooperative marketing rules to include value added processing involving animals.*
- Sec. 308. Extension of declaratory judgment procedures to farmers' cooperative organizations.*
- Sec. 309. Temporary suspension of personal holding company tax.*
- Sec. 310. Increase in section 179 expensing.*
- Sec. 311. Three-year carryback of net operating losses.*

Subtitle B—Manufacturing Relating to Films

- Sec. 321. Special rules for certain film and television productions.*
- Sec. 322. Modification of application of income forecast method of depreciation.*

Subtitle C—Manufacturing Relating to Timber

- Sec. 331. Expensing of certain reforestation expenditures.*
- Sec. 332. Election to treat cutting of timber as a sale or exchange.*
- Sec. 333. Capital gain treatment under section 631(b) to apply to outright sales by landowners.*
- Sec. 334. Modification of safe harbor rules for timber REITS.*

*TITLE IV—ADDITIONAL PROVISIONS**Subtitle A—Provisions Designed To Curtail Tax Shelters*

- Sec. 401. Clarification of economic substance doctrine.*
- Sec. 402. Penalty for failing to disclose reportable transaction.*
- Sec. 403. Accuracy-related penalty for listed transactions and other reportable transactions having a significant tax avoidance purpose.*
- Sec. 404. Penalty for understatements attributable to transactions lacking economic substance, etc.*
- Sec. 405. Modifications of substantial understatement penalty for nonreportable transactions.*
- Sec. 406. Tax shelter exception to confidentiality privileges relating to taxpayer communications.*
- Sec. 407. Disclosure of reportable transactions.*
- Sec. 408. Modifications to penalty for failure to register tax shelters.*
- Sec. 409. Modification of penalty for failure to maintain lists of investors.*
- Sec. 410. Modification of actions to enjoin certain conduct related to tax shelters and reportable transactions.*
- Sec. 411. Understatement of taxpayer's liability by income tax return preparer.*
- Sec. 412. Penalty on failure to report interests in foreign financial accounts.*
- Sec. 413. Frivolous tax submissions.*
- Sec. 414. Regulation of individuals practicing before the Department of Treasury.*
- Sec. 415. Penalty on promoters of tax shelters.*

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- Sec. 416. Statute of limitations for taxable years for which required listed transactions not reported.*
- Sec. 417. Denial of deduction for interest on underpayments attributable to non-disclosed reportable and noneconomic substance transactions.*
- Sec. 418. Authorization of appropriations for tax law enforcement.*

Subtitle B—Other Corporate Governance Provisions

- Sec. 421. Affirmation of consolidated return regulation authority.*
- Sec. 422. Signing of corporate tax returns by chief executive officer.*
- Sec. 423. Denial of deduction for certain fines, penalties, and other amounts.*
- Sec. 424. Disallowance of deduction for punitive damages.*
- Sec. 425. Increase in criminal monetary penalty limitation for the underpayment or overpayment of tax due to fraud.*

Subtitle C—Enron-Related Tax Shelter Provisions

- Sec. 431. Limitation on transfer or importation of built-in losses.*
- Sec. 432. No reduction of basis under section 734 in stock held by partnership in corporate partner.*
- Sec. 433. Repeal of special rules for FASITs.*
- Sec. 434. Expanded disallowance of deduction for interest on convertible debt.*
- Sec. 435. Expanded authority to disallow tax benefits under section 269.*
- Sec. 436. Modification of interaction between subpart F and passive foreign investment company rules.*

Subtitle D—Provisions to Discourage Expatriation

- Sec. 441. Tax treatment of inverted corporate entities.*
- Sec. 442. Imposition of mark-to-market tax on individuals who expatriate.*
- Sec. 443. Excise tax on stock compensation of insiders of inverted corporations.*
- Sec. 444. Reinsurance of United States risks in foreign jurisdictions.*
- Sec. 445. Reporting of taxable mergers and acquisitions.*

Subtitle E—International Tax

- Sec. 451. Clarification of banking business for purposes of determining investment of earnings in United States property.*
- Sec. 452. Prohibition on nonrecognition of gain through complete liquidation of holding company.*
- Sec. 453. Prevention of mismatching of interest and original issue discount deductions and income inclusions in transactions with related foreign persons.*
- Sec. 454. Effectively connected income to include certain foreign source income.*
- Sec. 455. Recapture of overall foreign losses on sale of controlled foreign corporation.*
- Sec. 456. Minimum holding period for foreign tax credit on withholding taxes on income other than dividends.*

*Subtitle F—Other Revenue Provisions**PART I—FINANCIAL INSTRUMENTS*

- Sec. 461. Treatment of stripped interests in bond and preferred stock funds, etc.*
- Sec. 462. Application of earnings stripping rules to partnerships and S corporations.*
- Sec. 463. Recognition of cancellation of indebtedness income realized on satisfaction of debt with partnership interest.*

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- Sec. 464. Modification of straddle rules.*
Sec. 465. Denial of installment sale treatment for all readily tradeable debt.

PART II—CORPORATIONS AND PARTNERSHIPS

- Sec. 466. Modification of treatment of transfers to creditors in divisive reorganizations.*
Sec. 467. Clarification of definition of nonqualified preferred stock.
Sec. 468. Modification of definition of controlled group of corporations.
Sec. 469. Mandatory basis adjustments in connection with partnership distributions and transfers of partnership interests.

PART III—DEPRECIATION AND AMORTIZATION

- Sec. 471. Extension of amortization of intangibles to sports franchises.*
Sec. 472. Services contracts treated in the same manner as leases for rules relating to tax-exempt use of property.
Sec. 473. Class lives for utility grading costs.
Sec. 474. Expansion of limitation on depreciation of certain passenger automobiles.
Sec. 475. Consistent amortization of periods for intangibles.
Sec. 476. Limitation on deductions allocable to property used by governments or other tax-exempt entities.

PART IV—ADMINISTRATIVE PROVISIONS

- Sec. 481. Clarification of rules for payment of estimated tax for certain deemed asset sales.*
Sec. 482. Extension of IRS user fees.
Sec. 483. Doubling of certain penalties, fines, and interest on underpayments related to certain offshore financial arrangement.
Sec. 484. Partial payment of tax liability in installment agreements.
Sec. 485. Extension of customs user fees.
Sec. 486. Deposits made to suspend running of interest on potential underpayments.
Sec. 487. Qualified tax collection contracts.

PART V—MISCELLANEOUS PROVISIONS

- Sec. 491. Addition of vaccines against hepatitis a to list of taxable vaccines.*
Sec. 492. Recognition of gain from the sale of a principal residence acquired in a like-kind exchange within 5 years of sale.
Sec. 493. Clarification of exemption from tax for small property and casualty insurance companies.
Sec. 494. Definition of insurance company for section 831.
Sec. 495. Limitations on deduction for charitable contributions of patents and similar property.
Sec. 496. Repeal of 10-percent rehabilitation tax credit.
Sec. 497. Increase in age of minor children whose unearned income is taxed as if parent's income.

1 **TITLE I—PROVISIONS RELATING**
2 **TO REPEAL OF EXCLUSION**
3 **FOR EXTRATERRITORIAL IN-**
4 **COME**

5 **SEC. 101. REPEAL OF EXCLUSION FOR EXTRATERRITORIAL**
6 **INCOME.**

7 (a) *IN GENERAL.*—Section 114 is hereby repealed.

8 (b) *CONFORMING AMENDMENTS.*—

9 (1)(A) *Subpart E of part III of subchapter N of*
10 *chapter 1 (relating to qualifying foreign trade in-*
11 *come) is hereby repealed.*

12 (B) *The table of subparts for such part III is*
13 *amended by striking the item relating to subpart E.*

14 (2) *The table of sections for part III of sub-*
15 *chapter B of chapter 1 is amended by striking the*
16 *item relating to section 114.*

17 (3) *The second sentence of section 56(g)(4)(B)(i)*
18 *is amended by striking “or under section 114”.*

19 (4) *Section 275(a) is amended—*

20 (A) *by inserting “or” at the end of para-*
21 *graph (4)(A), by striking “or” at the end of*
22 *paragraph (4)(B) and inserting a period, and by*
23 *striking subparagraph (C), and*

24 (B) *by striking the last sentence.*

1 (5) *Paragraph (3) of section 864(e) is*
2 *amended—*

3 (A) *by striking:*

4 “(3) *TAX-EXEMPT ASSETS NOT TAKEN INTO AC-*
5 *COUNT.—*

6 “(A) *IN GENERAL.—For purposes of*”; and
7 *inserting:*

8 “(3) *TAX-EXEMPT ASSETS NOT TAKEN INTO AC-*
9 *COUNT.—For purposes of*”, and

10 (B) *by striking subparagraph (B).*

11 (6) *Section 903 is amended by striking “114,*
12 *164(a),” and inserting “164(a)”.*

13 (7) *Section 999(c)(1) is amended by striking*
14 *“941(a)(5),”.*

15 (c) *EFFECTIVE DATE.—*

16 (1) *IN GENERAL.—The amendments made by*
17 *this section shall apply to transactions occurring after*
18 *the date of the enactment of this Act.*

19 (2) *BINDING CONTRACTS.—The amendments*
20 *made by this section shall not apply to any trans-*
21 *action in the ordinary course of a trade or business*
22 *which occurs pursuant to a binding contract—*

23 (A) *which is between the taxpayer and a*
24 *person who is not a related person (as defined in*
25 *section 943(b)(3) of such Code, as in effect on the*

1 (2) *EXCEPTION.*—Subparagraph (B)(ii) of para-
2 graph (1) shall not apply to gain on any asset held
3 by the revoking corporation if—

4 (A) the basis of such asset is determined in
5 whole or in part by reference to the basis of such
6 asset in the hands of the person from whom the
7 revoking corporation acquired such asset,

8 (B) the asset was acquired by transfer (not
9 as a result of the election under section 943(e) of
10 such Code) occurring on or after the 1st day on
11 which its election under section 943(e) of such
12 Code was effective, and

13 (C) a principal purpose of the acquisition
14 was the reduction or avoidance of tax (other
15 than a reduction in tax under section 114 of
16 such Code, as in effect on the day before the date
17 of the enactment of this Act).

18 (e) *GENERAL TRANSITION.*—

19 (1) *IN GENERAL.*—In the case of a taxable year
20 ending after the date of the enactment of this Act and
21 beginning before January 1, 2007, for purposes of
22 chapter 1 of such Code, a current FSC/ETI bene-
23 ficiary shall be allowed a deduction equal to the tran-
24 sition amount determined under this subsection with
25 respect to such beneficiary for such year.

1 (2) *CURRENT FSC/ETI BENEFICIARY.*—*The term*
 2 “*current FSC/ETI beneficiary*” *means any corpora-*
 3 *tion which entered into one or more transactions dur-*
 4 *ing its taxable year beginning in calendar year 2002*
 5 *with respect to which FSC/ETI benefits were allow-*
 6 *able.*

7 (3) *TRANSITION AMOUNT.*—*For purposes of this*
 8 *subsection—*

9 (A) *IN GENERAL.*—*The transition amount*
 10 *applicable to any current FSC/ETI beneficiary*
 11 *for any taxable year is the phaseout percentage*
 12 *of the base period amount.*

13 (B) *PHASEOUT PERCENTAGE.*—

14 (i) *IN GENERAL.*—*In the case of a tax-*
 15 *payer using the calendar year as its taxable*
 16 *year, the phaseout percentage shall be deter-*
 17 *mined under the following table:*

Years:	The phaseout percentage is:
2004	80
2005	80
2006	60.

18 (ii) *SPECIAL RULE FOR 2003.*—*The*
 19 *phaseout percentage for 2003 shall be the*
 20 *amount that bears the same ratio to 100*
 21 *percent as the number of days after the date*
 22 *of the enactment of this Act bears to 365.*

1 (iii) *SPECIAL RULE FOR FISCAL YEAR*
2 *TAXPAYERS.—In the case of a taxpayer not*
3 *using the calendar year as its taxable year,*
4 *the phaseout percentage is the weighted av-*
5 *erage of the phaseout percentages deter-*
6 *mined under the preceding provisions of*
7 *this paragraph with respect to calendar*
8 *years any portion of which is included in*
9 *the taxpayer’s taxable year. The weighted*
10 *average shall be determined on the basis of*
11 *the respective portions of the taxable year in*
12 *each calendar year.*

13 “(C) *SHORT TAXABLE YEAR.—The Sec-*
14 *retary shall prescribe guidance for the computa-*
15 *tion of the transition amount in the case of a*
16 *short taxable year.*

17 (4) *BASE PERIOD AMOUNT.—For purposes of this*
18 *subsection, the base period amount is the FSC/ETI*
19 *benefit for the taxpayer’s taxable year beginning in*
20 *calendar year 2002.*

21 (5) *FSC/ETI BENEFIT.—For purposes of this*
22 *subsection, the term “FSC/ETI benefit” means—*

23 (A) *amounts excludable from gross income*
24 *under section 114 of such Code, and*

1 (B) the exempt foreign trade income of re-
2 lated foreign sales corporations from property
3 acquired from the taxpayer (determined without
4 regard to section 923(a)(5) of such Code (relating
5 to special rule for military property), as in effect
6 on the day before the date of the enactment of the
7 FSC Repeal and Extraterritorial Income Exclu-
8 sion Act of 2000).

9 In determining the FSC/ETI benefit there shall be ex-
10 cluded any amount attributable to a transaction with
11 respect to which the taxpayer is the lessor unless the
12 leased property was manufactured or produced in
13 whole or in significant part by the taxpayer.

14 (6) SPECIAL RULE FOR AGRICULTURAL AND
15 HORTICULTURAL COOPERATIVES.—Determinations
16 under this subsection with respect to an organization
17 described in section 943(g)(1) of such Code, as in ef-
18 fect on the day before the date of the enactment of this
19 Act, shall be made at the cooperative level and the
20 purposes of this subsection shall be carried out in a
21 manner similar to section 199(h)(2) of such Code, as
22 added by this Act. Such determinations shall be in
23 accordance with such requirements and procedures as
24 the Secretary may prescribe.

1 (7) *CERTAIN RULES TO APPLY.—Rules similar to*
2 *the rules of section 41(f) of such Code shall apply for*
3 *purposes of this subsection.*

4 (8) *COORDINATION WITH BINDING CONTRACT*
5 *RULE.—The deduction determined under paragraph*
6 *(1) for any taxable year shall be reduced by the*
7 *phaseout percentage of any FSC/ETI benefit realized*
8 *for the taxable year by reason of subsection (c)(2) or*
9 *section 5(c)(1)(B) of the FSC Repeal and*
10 *Extraterritorial Income Exclusion Act of 2002, except*
11 *that for purposes of this paragraph the phaseout per-*
12 *centage for 2003 shall be treated as being equal to 100*
13 *percent.*

14 (9) *SPECIAL RULE FOR TAXABLE YEAR WHICH*
15 *INCLUDES DATE OF ENACTMENT.—In the case of a*
16 *taxable year which includes the date of the enactment*
17 *of this Act, the deduction allowed under this sub-*
18 *section to any current FSC/ETI beneficiary shall in*
19 *no event exceed—*

20 (A) *100 percent of such beneficiary's base*
21 *period amount for calendar year 2003, reduced*
22 *by*

23 (B) *the FSC/ETI benefit of such beneficiary*
24 *with respect to transactions occurring during the*

1 portion of the taxable year ending on the date of
2 the enactment of this Act.

3 **SEC. 102. DEDUCTION RELATING TO INCOME ATTRIB-**
4 **UTABLE TO UNITED STATES PRODUCTION AC-**
5 **TIVITIES.**

6 (a) *IN GENERAL.*—Part VI of subchapter B of chapter
7 1 (relating to itemized deductions for individuals and cor-
8 porations) is amended by adding at the end the following
9 new section:

10 **“SEC. 199. INCOME ATTRIBUTABLE TO DOMESTIC PRODUC-**
11 **TION ACTIVITIES.**

12 “(a) *ALLOWANCE OF DEDUCTION.*—

13 “(1) *IN GENERAL.*—There shall be allowed as a
14 deduction an amount equal to 9 percent of the quali-
15 fied production activities income of the taxpayer for
16 the taxable year.

17 “(2) *PHASEIN.*—In the case of taxable years be-
18 ginning in 2003, 2004, 2005, 2006, 2007, or 2008,
19 paragraph (1) shall be applied by substituting for the
20 percentage contained therein the transition percentage
21 determined under the following table:

“Taxable years beginning in:	The transition percentage is:
2003 or 2004	1
2005	2
2006	3
2007 or 2008	6.

22 “(b) *DEDUCTION LIMITED TO WAGES PAID.*—

1 “(1) *IN GENERAL.*—*The amount of the deduction*
2 *allowable under subsection (a) for any taxable year*
3 *shall not exceed 50 percent of the W-2 wages of the*
4 *employer for the taxable year.*

5 “(2) *W-2 WAGES.*—*For purposes of paragraph*
6 *(1), the term ‘W-2 wages’ means the sum of the aggre-*
7 *gate amounts the taxpayer is required to include on*
8 *statements under paragraphs (3) and (8) of section*
9 *6051(a) with respect to employment of employees of*
10 *the taxpayer during the taxpayer’s taxable year.*

11 “(3) *SPECIAL RULES.*—

12 “(A) *PASS-THRU ENTITIES.*—*In the case of*
13 *an S corporation, partnership, estate or trust, or*
14 *other pass-thru entity, the limitation under this*
15 *subsection shall apply at the entity level.*

16 “(B) *ACQUISITIONS AND DISPOSITIONS.*—
17 *The Secretary shall provide for the application*
18 *of this subsection in cases where the taxpayer ac-*
19 *quires, or disposes of, the major portion of a*
20 *trade or business or the major portion of a sepa-*
21 *rate unit of a trade or business during the tax-*
22 *able year.*

23 “(c) *QUALIFIED PRODUCTION ACTIVITIES INCOME.*—
24 *For purposes of this section—*

1 “(1) *IN GENERAL.*—The term ‘qualified produc-
2 tion activities income’ means an amount equal to the
3 portion of the modified taxable income of the taxpayer
4 which is attributable to domestic production activi-
5 ties.

6 “(2) *REDUCTION FOR TAXABLE YEARS BEGIN-*
7 *NING BEFORE 2013.*—The amount otherwise deter-
8 mined under paragraph (1) (the ‘unreduced amount’)
9 shall not exceed—

10 “(A) *in the case of taxable years beginning*
11 *before 2010, the product of the unreduced*
12 *amount and the domestic/worldwide fraction,*
13 *and*

14 “(B) *in the case of taxable years beginning*
15 *in 2010, 2011, or 2012, an amount equal to the*
16 *sum of—*

17 “(i) *the product of the unreduced*
18 *amount and the domestic/worldwide frac-*
19 *tion, plus*

20 “(ii) *the applicable percentage of an*
21 *amount equal to the unreduced amount*
22 *minus the amount determined under clause*
23 *(i).*

1 *For purposes of subparagraph (B)(ii), the applicable*
2 *percentage is 25 percent for 2010, 50 percent for*
3 *2011, and 75 percent for 2012.*

4 “(d) *DETERMINATION OF INCOME ATTRIBUTABLE TO*
5 *DOMESTIC PRODUCTION ACTIVITIES.—For purposes of this*
6 *section—*

7 “(1) *IN GENERAL.—The portion of the modified*
8 *taxable income which is attributable to domestic pro-*
9 *duction activities is so much of the modified taxable*
10 *income for the taxable year as does not exceed—*

11 “(A) *the taxpayer’s domestic production*
12 *gross receipts for such taxable year, reduced by*

13 “(B) *the sum of—*

14 “(i) *the costs of goods sold that are al-*
15 *locable to such receipts,*

16 “(ii) *other deductions, expenses, or*
17 *losses directly allocable to such receipts, and*

18 “(iii) *a proper share of other deduc-*
19 *tions, expenses, and losses that are not di-*
20 *rectly allocable to such receipts or another*
21 *class of income.*

22 “(2) *ALLOCATION METHOD.—The Secretary shall*
23 *prescribe rules for the proper allocation of items of in-*
24 *come, deduction, expense, and loss for purposes of de-*

1 *termining income attributable to domestic production*
2 *activities.*

3 “(3) *SPECIAL RULES FOR DETERMINING*
4 *COSTS.—*

5 “(A) *IN GENERAL.—For purposes of deter-*
6 *mining costs under clause (i) of paragraph*
7 *(1)(B), any item or service brought into the*
8 *United States shall be treated as acquired by*
9 *purchase, and its cost shall be treated as not less*
10 *than its fair market value immediately after it*
11 *entered the United States. A similar rule shall*
12 *apply in determining the adjusted basis of leased*
13 *or rented property where the lease or rental gives*
14 *rise to domestic production gross receipts.*

15 “(B) *EXPORTS FOR FURTHER MANUFAC-*
16 *TURE.—In the case of any property described in*
17 *subparagraph (A) that had been exported by the*
18 *taxpayer for further manufacture, the increase in*
19 *cost or adjusted basis under subparagraph (A)*
20 *shall not exceed the difference between the value*
21 *of the property when exported and the value of*
22 *the property when brought back into the United*
23 *States after the further manufacture.*

24 “(4) *MODIFIED TAXABLE INCOME.—The term*
25 *‘modified taxable income’ means taxable income com-*

1 *puted without regard to the deduction allowable under*
2 *this section.*

3 “(e) *DOMESTIC PRODUCTION GROSS RECEIPTS.*—*For*
4 *purposes of this section—*

5 “(1) *IN GENERAL.*—*The term ‘domestic produc-*
6 *tion gross receipts’ means the gross receipts of the tax-*
7 *payer which are derived from—*

8 “(A) *any sale, exchange, or other disposi-*
9 *tion of, or*

10 “(B) *any lease, rental, or license of,*
11 *qualifying production property which was manufac-*
12 *tured, produced, grown, or extracted in whole or in*
13 *significant part by the taxpayer within the United*
14 *States.*

15 “(2) *SPECIAL RULES FOR CERTAIN PROPERTY.*—
16 *In the case of any qualifying production property de-*
17 *scribed in subsection (f)(1)(C)—*

18 “(A) *such property shall be treated for pur-*
19 *poses of paragraph (1) as produced in signifi-*
20 *cant part by the taxpayer within the United*
21 *States if more than 50 percent of the aggregate*
22 *development and production costs are incurred*
23 *by the taxpayer within the United States, and*

24 “(B) *if a taxpayer acquires such property*
25 *before such property begins to generate substan-*

1 “(F) any film, tape, recording, book, maga-
2 zine, newspaper, or similar property the market
3 for which is primarily topical or otherwise essen-
4 tially transitory in nature.

5 “(g) DOMESTIC/WORLDWIDE FRACTION.—For pur-
6 poses of this section—

7 “(1) IN GENERAL.—The term ‘domestic/world-
8 wide fraction’ means a fraction (not greater than
9 1)—

10 “(A) the numerator of which is the value of
11 the domestic production of the taxpayer, and

12 “(B) the denominator of which is the value
13 of the worldwide production of the taxpayer.

14 “(2) VALUE OF DOMESTIC PRODUCTION.—The
15 value of domestic production is the excess (if any)
16 of—

17 “(A) the domestic production gross receipts,
18 over

19 “(B) the cost of purchased inputs allocable
20 to such receipts that are deductible under this
21 chapter for the taxable year.

22 “(3) PURCHASED INPUTS.—

23 “(A) IN GENERAL.—Purchased inputs are
24 any of the following items acquired by purchase:

1 “(i) *Services (other than services of em-*
2 *ployees) used in manufacture, production,*
3 *growth, or extraction activities.*

4 “(ii) *Items consumed in connection*
5 *with such activities.*

6 “(iii) *Items incorporated as part of the*
7 *property being manufactured, produced,*
8 *grown, or extracted.*

9 “(B) *SPECIAL RULE.—Rules similar to the*
10 *rules of subsection (d)(3) shall apply for pur-*
11 *poses of this subsection.*

12 “(4) *VALUE OF WORLDWIDE PRODUCTION.—*

13 “(A) *IN GENERAL.—The value of worldwide*
14 *production shall be determined under the prin-*
15 *ciples of paragraph (2), except that—*

16 “(i) *worldwide production gross re-*
17 *ceipts shall be taken into account, and*

18 “(ii) *paragraph (3)(B) shall not apply.*

19 “(B) *WORLDWIDE PRODUCTION GROSS RE-*
20 *CEIPTS.—The worldwide production gross re-*
21 *ceipts is the amount that would be determined*
22 *under subsection (e) if such subsection were ap-*
23 *plied without any reference to the United States.*

24 “(h) *DEFINITIONS AND SPECIAL RULES.—*

1 “(1) *APPLICATION OF SECTION TO PASS-THRU*
2 *ENTITIES.—In the case of an S corporation, partner-*
3 *ship, estate or trust, or other pass-thru entity—*

4 “(A) *subject to the provisions of paragraph*
5 *(2) and subsection (b)(3)(A), this section shall be*
6 *applied at the shareholder, partner, or similar*
7 *level, and*

8 “(B) *the Secretary shall prescribe rules for*
9 *the application of this section, including rules*
10 *relating to—*

11 “(i) *restrictions on the allocation of the*
12 *deduction to taxpayers at the partner or*
13 *similar level, and*

14 “(ii) *additional reporting require-*
15 *ments.*

16 “(2) *EXCLUSION FOR PATRONS OF AGRICUL-*
17 *TURAL AND HORTICULTURAL COOPERATIVES.—*

18 “(A) *IN GENERAL.—If any amount de-*
19 *scribed in paragraph (1) or (3) of section 1385*
20 *(a)—*

21 “(i) *is received by a person from an*
22 *organization to which part I of subchapter*
23 *T applies which is engaged in the mar-*
24 *keting of agricultural or horticultural prod-*
25 *ucts, and*

1 “(ii) is allocable to the portion of the
2 qualified production activities income of the
3 organization which is deductible under sub-
4 section (a) and designated as such by the
5 organization in a written notice mailed to
6 its patrons during the payment period de-
7 scribed in section 1382(d),
8 then such person shall be allowed an exclusion
9 from gross income with respect to such amount.
10 The taxable income of the organization shall not
11 be reduced under section 1382 by the portion of
12 any such amount with respect to which an exclu-
13 sion is allowable to a person by reason of this
14 paragraph.

15 “(B) SPECIAL RULES.—For purposes of ap-
16 plying subparagraph (A), in determining the
17 qualified production activities income of the or-
18 ganization under this section—

19 “(i) there shall not be taken into ac-
20 count in computing the organization’s
21 modified taxable income any deduction al-
22 lowable under subsection (b) or (c) of sec-
23 tion 1382 (relating to patronage dividends,
24 per-unit retain allocations, and nonpatron-
25 age distributions), and

1 “(ii) the organization shall be treated
2 as having manufactured, produced, grown,
3 or extracted in whole or significant part
4 any qualifying production property mar-
5 keted by the organization which its patrons
6 have so manufactured, produced, grown, or
7 extracted.

8 “(3) SPECIAL RULE FOR AFFILIATED GROUPS.—

9 “(A) IN GENERAL.—All members of an ex-
10 panded affiliated group shall be treated as a sin-
11 gle corporation for purposes of this section.

12 “(B) EXPANDED AFFILIATED GROUP.—The
13 term ‘expanded affiliated group’ means an affili-
14 ated group as defined in section 1504(a),
15 determined—

16 “(i) by substituting ‘50 percent’ for ‘80
17 percent’ each place it appears, and

18 “(ii) without regard to paragraphs (2)
19 and (4) of section 1504(b).

20 For purposes of determining the domestic/world-
21 wide fraction under subsection (g), clause (ii)
22 shall be applied by also disregarding paragraphs
23 (3) and (8) of section 1504(b).

24 “(4) COORDINATION WITH MINIMUM TAX.—The
25 deduction under this section shall be allowed for pur-

1 *poses of the tax imposed by section 55; except that for*
2 *purposes of section 55, alternative minimum taxable*
3 *income shall be taken into account in determining the*
4 *deduction under this section.*

5 *“(5) ORDERING RULE.—The amount of any*
6 *other deduction allowable under this chapter shall be*
7 *determined as if this section had not been enacted.*

8 *“(6) TRADE OR BUSINESS REQUIREMENT.—This*
9 *section shall be applied by only taking into account*
10 *items which are attributable to the actual conduct of*
11 *a trade or business.*

12 *“(7) POSSESSIONS, ETC.—*

13 *“(A) IN GENERAL.—For purposes of sub-*
14 *sections (d) and (e), the term ‘United States’ in-*
15 *cludes the Commonwealth of Puerto Rico, Guam,*
16 *American Samoa, the Commonwealth of the*
17 *Northern Mariana Islands, and the Virgin Is-*
18 *lands of the United States.*

19 *“(B) SPECIAL RULES FOR APPLYING WAGE*
20 *LIMITATION.—For purposes of applying the limi-*
21 *tation under subsection (b) for any taxable*
22 *year—*

23 *“(i) the determination of W–2 wages of*
24 *a taxpayer shall be made without regard to*
25 *any exclusion under section 3401(a)(8) for*

1 *remuneration paid for services performed in*
2 *a jurisdiction described in subparagraph*
3 *(A), and*

4 “(ii) *in determining the amount of*
5 *any credit allowable under section 30A or*
6 *936 for the taxable year, there shall not be*
7 *taken into account any wages which are*
8 *taken into account in applying such limita-*
9 *tion.*

10 “(8) *COORDINATION WITH TRANSITION RULES.—*

11 *For purposes of this section—*

12 “(A) *domestic production gross receipts*
13 *shall not include gross receipts from any trans-*
14 *action if the binding contract transition relief of*
15 *section 101(c)(2) of the Jumpstart Our Business*
16 *Strength (JOBS) Act applies to such trans-*
17 *action, and*

18 “(B) *any deduction allowed under section*
19 *101(e) of such Act shall be disregarded in deter-*
20 *mining the portion of the taxable income which*
21 *is attributable to domestic production gross re-*
22 *ceipts.”.*

23 “(b) *MINIMUM TAX.—Section 56(g)(4)(C) (relating to*
24 *disallowance of items not deductible in computing earnings*

1 *and profits) is amended by adding at the end the following*
2 *new clause:*

3 “(v) *DEDUCTION FOR DOMESTIC PRO-*
4 *DUCTION.—Clause (i) shall not apply to*
5 *any amount allowable as a deduction under*
6 *section 199.”.*

7 (c) *CLERICAL AMENDMENT.—The table of sections for*
8 *part VI of subchapter B of chapter 1 is amended by adding*
9 *at the end the following new item:*

 “*Sec. 199. Income attributable to domestic production activities.”.*

10 (d) *EFFECTIVE DATE.—*

11 (1) *IN GENERAL.—The amendments made by*
12 *this section shall apply to taxable years ending after*
13 *the date of the enactment of this Act.*

14 (2) *APPLICATION OF SECTION 15.—Section 15 of*
15 *the Internal Revenue Code of 1986 shall apply to the*
16 *amendments made by this section as if they were*
17 *changes in a rate of tax.*

18 ***TITLE II—INTERNATIONAL TAX***
19 ***PROVISIONS***

20 ***Subtitle A—International Tax***
21 ***Reform***

22 ***SEC. 201. 20-YEAR FOREIGN TAX CREDIT CARRYOVER; 1-***
23 ***YEAR FOREIGN TAX CREDIT CARRYBACK.***

24 (a) *GENERAL RULE.—Section 904(c) (relating to*
25 *carryback and carryover of excess tax paid) is amended—*

1 (1) *by striking “in the second preceding taxable*
2 *year,” and*

3 (2) *by striking “, and in the first, second, third,*
4 *fourth, or fifth” and inserting “and in any of the first*
5 *20”.*

6 (b) *EXCESS EXTRACTION TAXES.—Paragraph (1) of*
7 *section 907(f) is amended—*

8 (1) *by striking “in the second preceding taxable*
9 *year,”*

10 (2) *by striking “, and in the first, second, third,*
11 *fourth, or fifth” and inserting “and in any of the first*
12 *20”, and*

13 (3) *by striking the last sentence.*

14 (c) *EFFECTIVE DATE.—*

15 (1) *CARRYBACK.—The amendments made by sub-*
16 *sections (a)(1) and (b)(1) shall apply to excess foreign*
17 *taxes arising in taxable years beginning after the date*
18 *of the enactment of this Act.*

19 (2) *CARRYOVER.—The amendments made by sub-*
20 *sections (a)(2) and (b)(2) shall apply to excess foreign*
21 *taxes which (without regard to the amendments made*
22 *by this section) may be carried to any taxable year*
23 *ending after the date of the enactment of this Act.*

1 **SEC. 202. LOOK-THRU RULES TO APPLY TO DIVIDENDS**
2 **FROM NONCONTROLLED SECTION 902 COR-**
3 **PORATIONS.**

4 (a) *IN GENERAL.*—Section 904(d)(4) (relating to look-
5 thru rules apply to dividends from noncontrolled section
6 902 corporations) is amended to read as follows:

7 “(4) *LOOK-THRU APPLIES TO DIVIDENDS FROM*
8 *NONCONTROLLED SECTION 902 CORPORATIONS.*—

9 “(A) *IN GENERAL.*—For purposes of this
10 subsection, any dividend from a noncontrolled
11 section 902 corporation with respect to the tax-
12 payer shall be treated as income described in a
13 subparagraph of paragraph (1) in proportion to
14 the ratio of—

15 “(i) the portion of earnings and profits
16 attributable to income described in such
17 subparagraph, to

18 “(ii) the total amount of earnings and
19 profits.

20 “(B) *EARNINGS AND PROFITS OF CON-*
21 *TROLLED FOREIGN CORPORATIONS.*—In the case
22 of any distribution from a controlled foreign cor-
23 poration to a United States shareholder, rules
24 similar to the rules of subparagraph (A) shall
25 apply in determining the extent to which earn-
26 ings and profits of the controlled foreign corpora-

1 *tion which are attributable to dividends received*
2 *from a noncontrolled section 902 corporation*
3 *may be treated as income in a separate category.*

4 “(C) *SPECIAL RULES.—For purposes of this*
5 *paragraph—*

6 “(i) *EARNINGS AND PROFITS.—*

7 “(I) *IN GENERAL.—The rules of*
8 *section 316 shall apply.*

9 “(II) *REGULATIONS.—The Sec-*
10 *retary may prescribe regulations re-*
11 *garding the treatment of distributions*
12 *out of earnings and profits for periods*
13 *before the taxpayer’s acquisition of the*
14 *stock to which the distributions relate.*

15 “(ii) *INADEQUATE SUBSTANTIATION.—*
16 *If the Secretary determines that the proper*
17 *subparagraph of paragraph (1) in which a*
18 *dividend is described has not been substan-*
19 *tiated, such dividend shall be treated as in-*
20 *come described in paragraph (1)(A).*

21 “(iii) *COORDINATION WITH HIGH-*
22 *TAXED INCOME PROVISIONS.—Rules similar*
23 *to the rules of paragraph (3)(F) shall apply*
24 *for purposes of this paragraph.*

1 “(iv) *LOOK-THRU WITH RESPECT TO*
2 *CARRYOVER OF CREDIT.—Rules similar to*
3 *subparagraph (A) also shall apply to any*
4 *carryforward under subsection (c) from a*
5 *taxable year beginning before January 1,*
6 *2003, of tax allocable to a dividend from a*
7 *noncontrolled section 902 corporation with*
8 *respect to the taxpayer. The Secretary may*
9 *by regulations provide for the allocation of*
10 *any carryback of tax allocable to a dividend*
11 *from a noncontrolled section 902 corpora-*
12 *tion to such a taxable year for purposes of*
13 *allocating such dividend among the separate*
14 *categories in effect for such taxable year.”.*

15 (b) *CONFORMING AMENDMENTS.—*

16 (1) *Subparagraph (E) of section 904(d)(1) is*
17 *hereby repealed.*

18 (2) *Section 904(d)(2)(C)(iii) is amended by add-*
19 *ing “and” at the end of subclause (I), by striking sub-*
20 *clause (II), and by redesignating subclause (III) as*
21 *subclause (II).*

22 (3) *The last sentence of section 904(d)(2)(D) is*
23 *amended to read as follows: “Such term does not in-*
24 *clude any financial services income.”.*

25 (4) *Section 904(d)(2)(E) is amended—*

1 (A) by inserting “or (4)” after “paragraph
2 (3)” in clause (i), and

3 (B) by striking clauses (ii) and (iv) and by
4 redesignating clause (iii) as clause (ii).

5 (5) Section 904(d)(3)(F) is amended by striking
6 “(D), or (E)” and inserting “or (D)”.

7 (6) Section 864(d)(5)(A)(i) is amended by strik-
8 ing “(C)(iii)(III)” and inserting “(C)(iii)(II)”.

9 (c) *EFFECTIVE DATE.*—The amendments made by this
10 section shall apply to taxable years beginning after Decem-
11 ber 31, 2002.

12 **SEC. 203. FOREIGN TAX CREDIT UNDER ALTERNATIVE MIN-**
13 **IMUM TAX.**

14 (a) *IN GENERAL.*—

15 (1) Subsection (a) of section 59 is amended by
16 striking paragraph (2) and by redesignating para-
17 graphs (3) and (4) as paragraphs (2) and (3), respec-
18 tively.

19 (2) Section 53(d)(1)(B)(i)(II) is amended by
20 striking “and if section 59(a)(2) did not apply”.

21 (b) *EFFECTIVE DATE.*—The amendments made by this
22 section shall apply to taxable years beginning after Decem-
23 ber 31, 2004.

1 **SEC. 204. RECHARACTERIZATION OF OVERALL DOMESTIC**
2 **LOSS.**

3 (a) *GENERAL RULE.*—Section 904 is amended by re-
4 designating subsections (g), (h), (i), (j), and (k) as sub-
5 sections (h), (i), (j), (k), and (l) respectively, and by insert-
6 ing after subsection (f) the following new subsection:

7 “(g) *RECHARACTERIZATION OF OVERALL DOMESTIC*
8 *LOSS.*—

9 “(1) *GENERAL RULE.*—For purposes of this sub-
10 part and section 936, in the case of any taxpayer who
11 sustains an overall domestic loss for any taxable year
12 beginning after December 31, 2006, that portion of
13 the taxpayer’s taxable income from sources within the
14 United States for each succeeding taxable year which
15 is equal to the lesser of—

16 “(A) the amount of such loss (to the extent
17 not used under this paragraph in prior taxable
18 years), or

19 “(B) 50 percent of the taxpayer’s taxable
20 income from sources within the United States for
21 such succeeding taxable year,
22 shall be treated as income from sources without the
23 United States (and not as income from sources within
24 the United States).

25 “(2) *OVERALL DOMESTIC LOSS DEFINED.*—For
26 purposes of this subsection—

1 “(A) *IN GENERAL.*—*The term ‘overall do-*
2 *mestic loss’ means any domestic loss to the extent*
3 *such loss offsets taxable income from sources*
4 *without the United States for the taxable year or*
5 *for any preceding taxable year by reason of a*
6 *carryback. For purposes of the preceding sen-*
7 *tence, the term ‘domestic loss’ means the amount*
8 *by which the gross income for the taxable year*
9 *from sources within the United States is exceeded*
10 *by the sum of the deductions properly appor-*
11 *tioned or allocated thereto (determined without*
12 *regard to any carryback from a subsequent tax-*
13 *able year).*

14 “(B) *TAXPAYER MUST HAVE ELECTED FOR-*
15 *EIGN TAX CREDIT FOR YEAR OF LOSS.*—*The term*
16 *‘overall domestic loss’ shall not include any loss*
17 *for any taxable year unless the taxpayer chose*
18 *the benefits of this subpart for such taxable year.*

19 “(3) *CHARACTERIZATION OF SUBSEQUENT IN-*
20 *COME.*—

21 “(A) *IN GENERAL.*—*Any income from*
22 *sources within the United States that is treated*
23 *as income from sources without the United*
24 *States under paragraph (1) shall be allocated*
25 *among and increase the income categories in*

1 *proportion to the loss from sources within the*
2 *United States previously allocated to those in-*
3 *come categories.*

4 “(B) *INCOME CATEGORY.*—*For purposes of*
5 *this paragraph, the term ‘income category’ has*
6 *the meaning given such term by subsection*
7 *(f)(5)(E)(i).*”

8 “(4) *COORDINATION WITH SUBSECTION (f).*—*The*
9 *Secretary shall prescribe such regulations as may be*
10 *necessary to coordinate the provisions of this sub-*
11 *section with the provisions of subsection (f).”.*

12 (b) *CONFORMING AMENDMENTS.*—

13 (1) *Section 535(d)(2) is amended by striking*
14 *“section 904(g)(6)” and inserting “section 904(h)(6)”.*

15 (2) *Subparagraph (A) of section 936(a)(2) is*
16 *amended by striking “section 904(f)” and inserting*
17 *“subsections (f) and (g) of section 904”.*

18 (c) *EFFECTIVE DATE.*—*The amendments made by this*
19 *section shall apply to losses for taxable years beginning*
20 *after December 31, 2006.*

21 **SEC. 205. INTEREST EXPENSE ALLOCATION RULES.**

22 (a) *ELECTION TO ALLOCATE ON WORLDWIDE*
23 *BASIS.*—*Section 864 is amended by redesignating sub-*
24 *section (f) as subsection (g) and by inserting after sub-*
25 *section (e) the following new subsection:*

1 “(f) *ELECTION TO ALLOCATE INTEREST, ETC. ON*
2 *WORLDWIDE BASIS.—For purposes of this subchapter, at*
3 *the election of the worldwide affiliated group—*

4 “(1) *ALLOCATION AND APPORTIONMENT OF IN-*
5 *TEREST EXPENSE.—*

6 “(A) *IN GENERAL.—The taxable income of*
7 *each domestic corporation which is a member of*
8 *a worldwide affiliated group shall be determined*
9 *by allocating and apportioning interest expense*
10 *of each member as if all members of such group*
11 *were a single corporation.*

12 “(B) *TREATMENT OF WORLDWIDE AFFILI-*
13 *ATED GROUP.—The taxable income of the domes-*
14 *tic members of a worldwide affiliated group from*
15 *sources outside the United States shall be deter-*
16 *mined by allocating and apportioning the inter-*
17 *est expense of such domestic members to such in-*
18 *come in an amount equal to the excess (if any)*
19 *of—*

20 “(i) *the total interest expense of the*
21 *worldwide affiliated group multiplied by*
22 *the ratio which the foreign assets of the*
23 *worldwide affiliated group bears to all the*
24 *assets of the worldwide affiliated group,*
25 *over*

1 “(ii) *the interest expense of all foreign*
2 *corporations which are members of the*
3 *worldwide affiliated group to the extent*
4 *such interest expense of such foreign cor-*
5 *porations would have been allocated and*
6 *apportioned to foreign source income if this*
7 *subsection were applied to a group con-*
8 *sisting of all the foreign corporations in*
9 *such worldwide affiliated group.*

10 “(C) *WORLDWIDE AFFILIATED GROUP.—For*
11 *purposes of this paragraph, the term ‘worldwide*
12 *affiliated group’ means a group consisting of—*

13 “(i) *the includible members of an af-*
14 *filiated group (as defined in section*
15 *1504(a), determined without regard to*
16 *paragraphs (2) and (4) of section 1504(b)),*
17 *and*

18 “(ii) *all controlled foreign corporations*
19 *in which such members in the aggregate*
20 *meet the ownership requirements of section*
21 *1504(a)(2) either directly or indirectly*
22 *through applying paragraph (2) of section*
23 *958(a) or through applying rules similar to*
24 *the rules of such paragraph to stock owned*

1 *directly or indirectly by domestic partner-*
2 *ships, trusts, or estates.*

3 “(2) *ALLOCATION AND APPORTIONMENT OF*
4 *OTHER EXPENSES.—Expenses other than interest*
5 *which are not directly allocable or apportioned to any*
6 *specific income producing activity shall be allocated*
7 *and apportioned as if all members of the affiliated*
8 *group were a single corporation. For purposes of the*
9 *preceding sentence, the term ‘affiliated group’ has the*
10 *meaning given such term by section 1504 (determined*
11 *without regard to paragraph (4) of section 1504(b)).*

12 “(3) *TREATMENT OF TAX-EXEMPT ASSETS; BASIS*
13 *OF STOCK IN NONAFFILIATED 10-PERCENT OWNED*
14 *CORPORATIONS.—The rules of paragraphs (3) and (4)*
15 *of subsection (e) shall apply for purposes of this sub-*
16 *section, except that paragraph (4) shall be applied on*
17 *a worldwide affiliated group basis.*

18 “(4) *TREATMENT OF CERTAIN FINANCIAL INSTI-*
19 *TUTIONS.—*

20 “(A) *IN GENERAL.—For purposes of para-*
21 *graph (1), any corporation described in subpara-*
22 *graph (B) shall be treated as an includible cor-*
23 *poration for purposes of section 1504 only for*
24 *purposes of applying this subsection separately*
25 *to corporations so described.*

1 “(B) *DESCRIPTION.*—A corporation is de-
2 scribed in this subparagraph if—

3 “(i) such corporation is a financial in-
4 stitution described in section 581 or 591,

5 “(ii) the business of such financial in-
6 stitution is predominantly with persons
7 other than related persons (within the
8 meaning of subsection (d)(4)) or their cus-
9 tomers, and

10 “(iii) such financial institution is re-
11 quired by State or Federal law to be oper-
12 ated separately from any other entity which
13 is not such an institution.

14 “(C) *TREATMENT OF BANK AND FINANCIAL*
15 *HOLDING COMPANIES.*—To the extent provided in
16 regulations—

17 “(i) a bank holding company (within
18 the meaning of section 2(a) of the Bank
19 Holding Company Act of 1956 (12 U.S.C.
20 1841(a)),

21 “(ii) a financial holding company
22 (within the meaning of section 2(p) of the
23 Bank Holding Company Act of 1956 (12
24 U.S.C. 1841(p)), and

1 “(iii) any subsidiary of a financial in-
2 stitution described in section 581 or 591, or
3 of any such bank or financial holding com-
4 pany, if such subsidiary is predominantly
5 engaged (directly or indirectly) in the active
6 conduct of a banking, financing, or similar
7 business,

8 shall be treated as a corporation described in
9 subparagraph (B).

10 “(5) ELECTION TO EXPAND FINANCIAL INSTITU-
11 TION GROUP OF WORLDWIDE GROUP.—

12 “(A) IN GENERAL.—If a worldwide affili-
13 ated group elects the application of this sub-
14 section, all financial corporations which—

15 “(i) are members of such worldwide af-
16 filiated group, but

17 “(ii) are not corporations described in
18 paragraph (4)(B),

19 shall be treated as described in paragraph (4)(B)
20 for purposes of applying paragraph (4)(A). This
21 subsection (other than this paragraph) shall
22 apply to any such group in the same manner as
23 this subsection (other than this paragraph) ap-
24 plies to the pre-election worldwide affiliated
25 group of which such group is a part.

1 “(B) *FINANCIAL CORPORATION.*—*For pur-*
2 *poses of this paragraph, the term ‘financial cor-*
3 *poration’ means any corporation if at least 80*
4 *percent of its gross income is income described in*
5 *section 904(d)(2)(C)(ii) and the regulations*
6 *thereunder which is derived from transactions*
7 *with persons who are not related (within the*
8 *meaning of section 267(b) or 707(b)(1)) to the*
9 *corporation. For purposes of the preceding sen-*
10 *tence, there shall be disregarded any item of in-*
11 *come or gain from a transaction or series of*
12 *transactions a principal purpose of which is the*
13 *qualification of any corporation as a financial*
14 *corporation.*

15 “(C) *ANTIABUSE RULES.*—*In the case of a*
16 *corporation which is a member of an electing fi-*
17 *nancial institution group, to the extent that such*
18 *corporation—*

19 “(i) *distributes dividends or makes*
20 *other distributions with respect to its stock*
21 *after the date of the enactment of this para-*
22 *graph to any member of the pre-election*
23 *worldwide affiliated group (other than to a*
24 *member of the electing financial institution*
25 *group) in excess of the greater of—*

1 “(I) its average annual dividend
2 (expressed as a percentage of current
3 earnings and profits) during the 5-tax-
4 able-year period ending with the tax-
5 able year preceding the taxable year, or
6 “(II) 25 percent of its average an-
7 nual earnings and profits for such 5-
8 taxable-year period, or
9 “(ii) deals with any person in any
10 manner not clearly reflecting the income of
11 the corporation (as determined under prin-
12 ciples similar to the principles of section
13 482),
14 an amount of indebtedness of the electing finan-
15 cial institution group equal to the excess dis-
16 tribution or the understatement or overstatement
17 of income, as the case may be, shall be re-
18 characterized (for the taxable year and subse-
19 quent taxable years) for purposes of this para-
20 graph as indebtedness of the worldwide affiliated
21 group (excluding the electing financial institu-
22 tion group). If a corporation has not been in ex-
23 istence for 5 taxable years, this subparagraph
24 shall be applied with respect to the period it was
25 in existence.

1 “(D) *ELECTION*.—An election under this
2 paragraph with respect to any financial institu-
3 tion group may be made only by the common
4 parent of the pre-election worldwide affiliated
5 group and may be made only for the first taxable
6 year beginning after December 31, 2008, in
7 which such affiliated group includes 1 or more
8 financial corporations. Such an election, once
9 made, shall apply to all financial corporations
10 which are members of the electing financial in-
11 stitution group for such taxable year and all
12 subsequent years unless revoked with the consent
13 of the Secretary.

14 “(E) *DEFINITIONS RELATING TO GROUPS*.—
15 For purposes of this paragraph—

16 “(i) *PRE-ELECTION WORLDWIDE AF-*
17 *FILIATED GROUP*.—The term ‘pre-election
18 worldwide affiliated group’ means, with re-
19 spect to a corporation, the worldwide affili-
20 ated group of which such corporation would
21 (but for an election under this paragraph)
22 be a member for purposes of applying para-
23 graph (1).

24 “(ii) *ELECTING FINANCIAL INSTITU-*
25 *TION GROUP*.—The term ‘electing financial

1 *institution group’ means the group of cor-*
2 *porations to which this subsection applies*
3 *separately by reason of the application of*
4 *paragraph (4)(A) and which includes finan-*
5 *cial corporations by reason of an election*
6 *under subparagraph (A).*

7 “(F) *REGULATIONS.*—*The Secretary shall*
8 *prescribe such regulations as may be appropriate*
9 *to carry out this subsection, including*
10 *regulations—*

11 *“(i) providing for the direct allocation*
12 *of interest expense in other circumstances*
13 *where such allocation would be appropriate*
14 *to carry out the purposes of this subsection,*

15 *“(ii) preventing assets or interest ex-*
16 *penditure from being taken into account more*
17 *than once, and*

18 *“(iii) dealing with changes in members*
19 *of any group (through acquisitions or other-*
20 *wise) treated under this paragraph as an*
21 *affiliated group for purposes of this sub-*
22 *section.*

23 “(6) *ELECTION.*—*An election to have this sub-*
24 *section apply with respect to any worldwide affiliated*
25 *group may be made only by the common parent of the*

1 *domestic affiliated group referred to in paragraph*
2 *(1)(C) and may be made only for the first taxable*
3 *year beginning after December 31, 2008, in which a*
4 *worldwide affiliated group exists which includes such*
5 *affiliated group and at least 1 foreign corporation.*
6 *Such an election, once made, shall apply to such com-*
7 *mon parent and all other corporations which are*
8 *members of such worldwide affiliated group for such*
9 *taxable year and all subsequent years unless revoked*
10 *with the consent of the Secretary.”.*

11 *(b) EXPANSION OF REGULATORY AUTHORITY.—Para-*
12 *graph (7) of section 864(e) is amended—*

13 *(1) by inserting before the comma at the end of*
14 *subparagraph (B) “and in other circumstances where*
15 *such allocation would be appropriate to carry out the*
16 *purposes of this subsection”, and*

17 *(2) by striking “and” at the end of subpara-*
18 *graph (E), by redesignating subparagraph (F) as sub-*
19 *paragraph (G), and by inserting after subparagraph*
20 *(E) the following new subparagraph:*

21 *“(F) preventing assets or interest expense*
22 *from being taken into account more than once,*
23 *and”.*

1 (c) *EFFECTIVE DATE.*—*The amendments made by this*
2 *section shall apply to taxable years beginning after Decem-*
3 *ber 31, 2008.*

4 **SEC. 206. DETERMINATION OF FOREIGN PERSONAL HOLD-**
5 **ING COMPANY INCOME WITH RESPECT TO**
6 **TRANSACTIONS IN COMMODITIES.**

7 (a) *IN GENERAL.*—*Clauses (i) and (ii) of section*
8 *954(c)(1)(C) (relating to commodity transactions) are*
9 *amended to read as follows:*

10 “(i) *arise out of commodity hedging*
11 *transactions (as defined in paragraph*
12 *(4)(A)),*

13 “(ii) *are active business gains or losses*
14 *from the sale of commodities, but only if*
15 *substantially all of the controlled foreign*
16 *corporation’s commodities are property de-*
17 *scribed in paragraph (1), (2), or (8) of sec-*
18 *tion 1221(a), or”.*

19 (b) *DEFINITION AND SPECIAL RULES.*—*Subsection (c)*
20 *of section 954 is amended by adding after paragraph (3)*
21 *the following new paragraph:*

22 “(4) *DEFINITION AND SPECIAL RULES RELATING*
23 *TO COMMODITY TRANSACTIONS.*—

24 “(A) *COMMODITY HEDGING TRANS-*
25 *ACTIONS.*—*For purposes of paragraph (1)(C)(i),*

1 *the term ‘commodity hedging transaction’ means*
2 *any transaction with respect to a commodity if*
3 *such transaction—*

4 *“(i) is a hedging transaction as de-*
5 *finied in section 1221(b)(2), determined—*

6 *“(I) without regard to subpara-*
7 *graph (A)(ii) thereof,*

8 *“(II) by applying subparagraph*
9 *(A)(i) thereof by substituting ‘ordinary*
10 *property or property described in sec-*
11 *tion 1231(b)’ for ‘ordinary property’,*
12 *and*

13 *“(III) by substituting ‘controlled*
14 *foreign corporation’ for ‘taxpayer’ each*
15 *place it appears, and*

16 *“(ii) is clearly identified as such in ac-*
17 *cordance with section 1221(a)(7).*

18 *“(B) TREATMENT OF DEALER ACTIVITIES*
19 *UNDER PARAGRAPH (1)(C).—Commodities with*
20 *respect to which gains and losses are not taken*
21 *into account under paragraph (2)(C) in com-*
22 *puting a controlled foreign corporation’s foreign*
23 *personal holding company income shall not be*
24 *taken into account in applying the substantially*

1 *all test under paragraph (1)(C)(ii) to such cor-*
2 *poration.*

3 “(C) *REGULATIONS.*—*The Secretary shall*
4 *prescribe such regulations as are appropriate to*
5 *carry out the purposes of paragraph (1)(C) in*
6 *the case of transactions involving related par-*
7 *ties.”.*

8 (c) *MODIFICATION OF EXCEPTION FOR DEALERS.*—
9 *Clause (i) of section 954(c)(2)(C) is amended by inserting*
10 *“and transactions involving physical settlement” after “(in-*
11 *cluding hedging transactions”.*

12 (d) *EFFECTIVE DATE.*—*The amendments made by this*
13 *section shall apply to transactions entered into after Decem-*
14 *ber 31, 2004.*

15 ***Subtitle B—International Tax***
16 ***Simplification***

17 ***SEC. 211. REPEAL OF FOREIGN PERSONAL HOLDING COM-***
18 ***PANY RULES AND FOREIGN INVESTMENT***
19 ***COMPANY RULES.***

20 (a) *GENERAL RULE.*—*The following provisions are*
21 *hereby repealed:*

22 (1) *Part III of subchapter G of chapter 1 (relat-*
23 *ing to foreign personal holding companies).*

24 (2) *Section 1246 (relating to gain on foreign in-*
25 *vestment company stock).*

1 (3) *Section 1247 (relating to election by foreign*
2 *investment companies to distribute income currently).*

3 (b) *EXEMPTION OF FOREIGN CORPORATIONS FROM*
4 *PERSONAL HOLDING COMPANY RULES.—*

5 (1) *IN GENERAL.—Subsection (c) of section 542*
6 *(relating to exceptions) is amended—*

7 (A) *by striking paragraph (5) and inserting*
8 *the following:*

9 “(5) *a foreign corporation,*”

10 (B) *by striking paragraphs (7) and (10)*
11 *and by redesignating paragraphs (8) and (9) as*
12 *paragraphs (7) and (8), respectively,*

13 (C) *by inserting “and” at the end of para-*
14 *graph (7) (as so redesignated), and*

15 (D) *by striking “; and” at the end of para-*
16 *graph (8) (as so redesignated) and inserting a*
17 *period.*

18 (2) *TREATMENT OF INCOME FROM PERSONAL*
19 *SERVICE CONTRACTS.—Paragraph (1) of section*
20 *954(c) is amended by adding at the end the following*
21 *new subparagraph:*

22 “(I) *PERSONAL SERVICE CONTRACTS.—*

23 “(i) *Amounts received under a contract*
24 *under which the corporation is to furnish*
25 *personal services if—*

1 “(I) some person other than the
2 corporation has the right to designate
3 (by name or by description) the indi-
4 vidual who is to perform the services,
5 or

6 “(II) the individual who is to per-
7 form the services is designated (by
8 name or by description) in the con-
9 tract, and

10 “(ii) amounts received from the sale or
11 other disposition of such a contract.

12 This subparagraph shall apply with respect to
13 amounts received for services under a particular
14 contract only if at some time during the taxable
15 year 25 percent or more in value of the out-
16 standing stock of the corporation is owned, di-
17 rectly or indirectly, by or for the individual who
18 has performed, is to perform, or may be des-
19 ignated (by name or by description) as the one
20 to perform, such services.”.

21 (c) CONFORMING AMENDMENTS.—

22 (1) Section 1(h) is amended—

23 (A) in paragraph (10), by inserting “and”
24 at the end of subparagraph (F), by striking sub-

1 *paragraph (G), and by redesignating subpara-*
2 *graph (H) as subparagraph (G), and*

3 *(B) by striking “a foreign personal holding*
4 *company (as defined in section 552), a foreign*
5 *investment company (as defined in section*
6 *1246(b)), or” in paragraph (11)(C)(iii).*

7 *(2) Section 163(e)(3)(B), as amended by this*
8 *Act, is amended by striking “which is a foreign per-*
9 *sonal holding company (as defined in section 552), a*
10 *controlled foreign corporation (as defined in section*
11 *957), or” and inserting “which is a controlled foreign*
12 *corporation (as defined in section 957) or”.*

13 *(3) Paragraph (2) of section 171(c) is*
14 *amended—*

15 *(A) by striking “, or by a foreign personal*
16 *holding company, as defined in section 552”,*
17 *and*

18 *(B) by striking “, or foreign personal hold-*
19 *ing company”.*

20 *(4) Paragraph (2) of section 245(a) is amended*
21 *by striking “foreign personal holding company or”.*

22 *(5) Section 267(a)(3)(B), as amended by this*
23 *Act, is amended by striking “to a foreign personal*
24 *holding company (as defined in section 552), a con-*
25 *trolled foreign corporation (as defined in section 957),*

1 *or” and inserting “to a controlled foreign corporation*
2 *(as defined in section 957) or”.*

3 *(6) Section 312 is amended by striking sub-*
4 *section (j).*

5 *(7) Subsection (m) of section 312 is amended by*
6 *striking “, a foreign investment company (within the*
7 *meaning of section 1246(b)), or a foreign personal*
8 *holding company (within the meaning of section*
9 *552)”.*

10 *(8) Subsection (e) of section 443 is amended by*
11 *striking paragraph (3) and by redesignating para-*
12 *graphs (4) and (5) as paragraphs (3) and (4), respec-*
13 *tively.*

14 *(9) Subparagraph (B) of section 465(c)(7) is*
15 *amended by adding “or” at the end of clause (i), by*
16 *striking clause (ii), and by redesignating clause (iii)*
17 *as clause (ii).*

18 *(10) Paragraph (1) of section 543(b) is amended*
19 *by inserting “and” at the end of subparagraph (A),*
20 *by striking “, and” at the end of subparagraph (B)*
21 *and inserting a period, and by striking subparagraph*
22 *(C).*

23 *(11) Paragraph (1) of section 562(b) is amended*
24 *by striking “or a foreign personal holding company*
25 *described in section 552”.*

1 (12) *Section 563 is amended—*

2 (A) *by striking subsection (c),*

3 (B) *by redesignating subsection (d) as sub-*
4 *section (c), and*

5 (C) *by striking “subsection (a), (b), or (c)”*
6 *in subsection (c) (as so redesignated) and insert-*
7 *ing “subsection (a) or (b)”.*

8 (13) *Subsection (d) of section 751 is amended by*
9 *adding “and” at the end of paragraph (2), by strik-*
10 *ing paragraph (3), by redesignating paragraph (4) as*
11 *paragraph (3), and by striking “paragraph (1), (2),*
12 *or (3)” in paragraph (3) (as so redesignated) and in-*
13 *serting “paragraph (1) or (2)”.*

14 (14) *Paragraph (2) of section 864(d) is amended*
15 *by striking subparagraph (A) and by redesignating*
16 *subparagraphs (B) and (C) as subparagraphs (A)*
17 *and (B), respectively.*

18 (15)(A) *Subparagraph (A) of section 898(b)(1) is*
19 *amended to read as follows:*

20 “(A) *which is treated as a controlled foreign*
21 *corporation for any purpose under subpart F of*
22 *part III of this subchapter, and”.*

23 (B) *Subparagraph (B) of section 898(b)(2) is*
24 *amended by striking “and sections 551(f) and 554,*
25 *whichever are applicable,”.*

1 (C) Paragraph (3) of section 898(b) is amended
2 to read as follows:

3 “(3) UNITED STATES SHAREHOLDER.—The term
4 ‘United States shareholder’ has the meaning given to
5 such term by section 951(b), except that, in the case
6 of a foreign corporation having related person insur-
7 ance income (as defined in section 953(c)(2)), the Sec-
8 retary may treat any person as a United States
9 shareholder for purposes of this section if such person
10 is treated as a United States shareholder under sec-
11 tion 953(c)(1).”.

12 (D) Subsection (c) of section 898 is amended to
13 read as follows:

14 “(c) DETERMINATION OF REQUIRED YEAR.—

15 “(1) IN GENERAL.—The required year is—

16 “(A) the majority U.S. shareholder year, or

17 “(B) if there is no majority U.S. share-
18 holder year, the taxable year prescribed under
19 regulations.

20 “(2) 1-MONTH DEFERRAL ALLOWED.—A specified
21 foreign corporation may elect, in lieu of the taxable
22 year under paragraph (1)(A), a taxable year begin-
23 ning 1 month earlier than the majority U.S. share-
24 holder year.

25 “(3) MAJORITY U.S. SHAREHOLDER YEAR.—

1 “(A) *IN GENERAL.*—*For purposes of this*
2 *subsection, the term ‘majority U.S. shareholder*
3 *year’ means the taxable year (if any) which, on*
4 *each testing day, constituted the taxable year*
5 *of—*

6 “(i) *each United States shareholder de-*
7 *scribed in subsection (b)(2)(A), and*

8 “(ii) *each United States shareholder*
9 *not described in clause (i) whose stock was*
10 *treated as owned under subsection (b)(2)(B)*
11 *by any shareholder described in such clause.*

12 “(B) *TESTING DAY.*—*The testing days shall*
13 *be—*

14 “(i) *the first day of the corporation’s*
15 *taxable year (determined without regard to*
16 *this section), or*

17 “(ii) *the days during such representa-*
18 *tive period as the Secretary may pre-*
19 *scribe.”.*

20 (16) *Clause (ii) of section 904(d)(2)(A) is*
21 *amended to read as follows:*

22 “(i) *CERTAIN AMOUNTS INCLUDED.*—
23 *Except as provided in clause (iii), the term*
24 *‘passive income’ includes, except as pro-*
25 *vided in subparagraph (E)(iii) or para-*

1 *graph (3)(I), any amount includible in*
2 *gross income under section 1293 (relating to*
3 *certain passive foreign investment compa-*
4 *nies).”.*

5 *(17)(A) Subparagraph (A) of section 904(g)(1),*
6 *as redesignated by section 204, is amended by adding*
7 *“or” at the end of clause (i), by striking clause (ii),*
8 *and by redesignating clause (iii) as clause (ii).*

9 *(B) The paragraph heading of paragraph (2) of*
10 *section 904(g), as so redesignated, is amended by*
11 *striking “FOREIGN PERSONAL HOLDING OR”.*

12 *(18) Section 951 is amended by striking sub-*
13 *sections (c) and (d) and by redesignating subsections*
14 *(e) and (f) as subsections (c) and (d), respectively.*

15 *(19) Paragraph (3) of section 989(b) is amended*
16 *by striking “, 551(a),”.*

17 *(20) Paragraph (5) of section 1014(b) is amend-*
18 *ed by inserting “and before January 1, 2005,” after*
19 *“August 26, 1937,”.*

20 *(21) Subsection (a) of section 1016 is amended*
21 *by striking paragraph (13).*

22 *(22)(A) Paragraph (3) of section 1212(a) is*
23 *amended to read as follows:*

1 “(3) *SPECIAL RULES ON CARRYBACKS.—A net*
2 *capital loss of a corporation shall not be carried back*
3 *under paragraph (1)(A) to a taxable year—*

4 “(A) *for which it is a regulated investment*
5 *company (as defined in section 851), or*

6 “(B) *for which it is a real estate investment*
7 *trust (as defined in section 856).”.*

8 (B) *The amendment made by subparagraph (A)*
9 *shall apply to taxable years beginning after December*
10 *31, 2004.*

11 (23) *Section 1223 is amended by striking para-*
12 *graph (10) and by redesignating the following para-*
13 *graphs accordingly.*

14 (24) *Subsection (d) of section 1248 is amended*
15 *by striking paragraph (5) and by redesignating para-*
16 *graphs (6) and (7) as paragraphs (5) and (6), respec-*
17 *tively.*

18 (25) *Paragraph (2) of section 1260(c) is amend-*
19 *ed by striking subparagraphs (H) and (I) and by re-*
20 *designating subparagraph (J) as subparagraph (H).*

21 (26)(A) *Subparagraph (F) of section 1291(b)(3)*
22 *is amended by striking “551(d), 959(a),” and insert-*
23 *ing “959(a)”.*

24 (B) *Subsection (e) of section 1291 is amended by*
25 *inserting “(as in effect on the day before the date of*

1 *the enactment of the Jumpstart Our Business*
2 *Strength (JOBS) Act)” after “section 1246”.*

3 *(27) Paragraph (2) of section 1294(a) is amend-*
4 *ed to read as follows:*

5 *“(2) ELECTION NOT PERMITTED WHERE*
6 *AMOUNTS OTHERWISE INCLUDIBLE UNDER SECTION*
7 *951.—The taxpayer may not make an election under*
8 *paragraph (1) with respect to the undistributed PFIC*
9 *earnings tax liability attributable to a qualified elect-*
10 *ing fund for the taxable year if any amount is in-*
11 *cludible in the gross income of the taxpayer under sec-*
12 *tion 951 with respect to such fund for such taxable*
13 *year.”.*

14 *(28) Section 6035 is hereby repealed.*

15 *(29) Subparagraph (D) of section 6103(e)(1) is*
16 *amended by striking clause (iv) and redesignating*
17 *clauses (v) and (vi) as clauses (iv) and (v), respec-*
18 *tively.*

19 *(30) Subparagraph (B) of section 6501(e)(1) is*
20 *amended to read as follows:*

21 *“(B) CONSTRUCTIVE DIVIDENDS.—If the*
22 *taxpayer omits from gross income an amount*
23 *properly includible therein under section 951(a),*
24 *the tax may be assessed, or a proceeding in court*
25 *for the collection of such tax may be done with-*

1 *out assessing, at any time within 6 years after*
2 *the return was filed.”.*

3 (31) *Subsection (a) of section 6679 is amended—*

4 (A) *by striking “6035, 6046, and 6046A” in*
5 *paragraph (1) and inserting “6046 and 6046A”,*
6 *and*

7 (B) *by striking paragraph (3).*

8 (32) *Sections 170(f)(10)(A), 508(d), 4947, and*
9 *4948(c)(4) are each amended by striking “556(b)(2),”*
10 *each place it appears.*

11 (33) *The table of parts for subchapter G of chap-*
12 *ter 1 is amended by striking the item relating to part*
13 *III.*

14 (34) *The table of sections for part IV of sub-*
15 *chapter P of chapter 1 is amended by striking the*
16 *items relating to sections 1246 and 1247.*

17 (35) *The table of sections for subpart A of part*
18 *III of subchapter A of chapter 61 is amended by strik-*
19 *ing the item relating to section 6035.*

20 (d) *EFFECTIVE DATE.—The amendments made by this*
21 *section shall apply to taxable years of foreign corporations*
22 *beginning after December 31, 2004, and to taxable years*
23 *of United States shareholders with or within which such*
24 *taxable years of foreign corporations end.*

1 **SEC. 212. EXPANSION OF DE MINIMIS RULE UNDER SUB-**
2 **PART F.**

3 (a) *IN GENERAL.*—Clause (ii) of section 954(b)(3)(A)
4 (relating to de minimis, etc., rules) is amended by striking
5 “\$1,000,000” and inserting “\$5,000,000”.

6 (b) *TECHNICAL AMENDMENTS.*—

7 (1) Clause (ii) of section 864(d)(5)(A) is amend-
8 ed by striking “\$1,000,000” and inserting
9 “\$5,000,000”.

10 (2) Clause (i) of section 881(c)(5)(A) is amended
11 by striking “\$1,000,000” and inserting “\$5,000,000”.

12 (c) *EFFECTIVE DATE.*—The amendments made by this
13 section shall apply to taxable years of foreign corporations
14 beginning after December 31, 2004, and to taxable years
15 of United States shareholders with or within which such
16 taxable years of foreign corporations end.

17 **SEC. 213. ATTRIBUTION OF STOCK OWNERSHIP THROUGH**
18 **PARTNERSHIPS TO APPLY IN DETERMINING**
19 **SECTION 902 AND 960 CREDITS.**

20 (a) *IN GENERAL.*—Subsection (c) of section 902 is
21 amended by redesignating paragraph (7) as paragraph (8)
22 and by inserting after paragraph (6) the following new
23 paragraph:

24 “(7) *CONSTRUCTIVE OWNERSHIP THROUGH*
25 *PARTNERSHIPS.*—Stock owned, directly or indirectly,
26 by or for a partnership shall be considered as being

1 *tion shall not apply to any taxpayer who is not a*
2 *United States person if such taxpayer capitalizes*
3 *costs of produced property or property acquired for*
4 *resale by applying the method used to ascertain the*
5 *income, profit, or loss for purposes of reports or state-*
6 *ments to shareholders, partners, other proprietors, or*
7 *beneficiaries, or for credit purposes.”.*

8 *(b) EFFECTIVE DATE.—*

9 *(1) IN GENERAL.—The amendment made by sub-*
10 *section (a) shall apply to taxable years beginning*
11 *after December 31, 2004.*

12 *(2) CHANGE IN METHOD OF ACCOUNTING.—In*
13 *the case of any taxpayer required by the amendment*
14 *made by this section to change its method of account-*
15 *ing for its first taxable year beginning after December*
16 *31, 2004—*

17 *(A) such change shall be treated as initiated*
18 *by the taxpayer,*

19 *(B) such change shall be treated as made*
20 *with the consent of the Secretary of the Treasury,*
21 *and*

22 *(C) the net amount of the adjustments re-*
23 *quired to be taken into account by the taxpayer*
24 *under section 481 of the Internal Revenue Code*

1 *of 1986 shall be taken into account in such first*
2 *year.*

3 **SEC. 215. REPEAL OF WITHHOLDING TAX ON DIVIDENDS**
4 **FROM CERTAIN FOREIGN CORPORATIONS.**

5 *(a) IN GENERAL.—Paragraph (2) of section 871(i) (re-*
6 *lating to tax not to apply to certain interest and dividends)*
7 *is amended by adding at the end the following new subpara-*
8 *graph:*

9 *“(D) Dividends paid by a foreign corpora-*
10 *tion which are treated under section*
11 *861(a)(2)(B) as income from sources within the*
12 *United States.”.*

13 *(b) EFFECTIVE DATE.—The amendment made by this*
14 *section shall apply to payments made after December 31,*
15 *2004.*

16 **SEC. 216. REPEAL OF SPECIAL CAPITAL GAINS TAX ON**
17 **ALIENS PRESENT IN THE UNITED STATES**
18 **FOR 183 DAYS OR MORE.**

19 *(a) IN GENERAL.—Subsection (a) of section 871 is*
20 *amended by striking paragraph (2) and by redesignating*
21 *paragraph (3) as paragraph (2).*

22 *(b) CONFORMING AMENDMENT.—Section 1441(g) is*
23 *amended is amended by striking “section 871(a)(3)” and*
24 *inserting “section 871(a)(2)”.*

1 (c) *EFFECTIVE DATE.*—*The amendments made by this*
2 *section shall apply to taxable years beginning after Decem-*
3 *ber 31, 2003.*

4 ***Subtitle C—Additional***
5 ***International Tax Provisions***

6 **SEC. 221. ACTIVE LEASING INCOME FROM AIRCRAFT AND**
7 **VESSELS.**

8 (a) *IN GENERAL.*—*Section 954(c)(2) is amended by*
9 *adding at the end the following new subparagraph:*

10 “(D) *CERTAIN RENTS, ETC.*—

11 “(i) *IN GENERAL.*—*Foreign personal*
12 *holding company income shall not include*
13 *qualified leasing income derived from or in*
14 *connection with the leasing or rental of any*
15 *aircraft or vessel.*

16 “(ii) *QUALIFIED LEASING INCOME.*—
17 *For purposes of this subparagraph, the term*
18 *‘qualified leasing income’ means rents and*
19 *gains derived in the active conduct of a*
20 *trade or business of leasing with respect to*
21 *which the controlled foreign corporation*
22 *conducts substantial activity, but only if—*

23 “(I) *the leased property is used by*
24 *the lessee or other end-user in foreign*

1 *commerce and predominantly outside*
2 *the United States, and*

3 *“(II) the lessee or other end-user*
4 *is not a related person (as defined in*
5 *subsection (d)(3)).*

6 *Any amount not treated as foreign personal*
7 *holding income under this subparagraph*
8 *shall not be treated as foreign base company*
9 *shipping income.”.*

10 *(b) CONFORMING AMENDMENT.—Section 954(c)(1)(B)*
11 *is amended by inserting “or (2)(D)” after “paragraph*
12 *(2)(A)”.*

13 *(c) EFFECTIVE DATE.—The amendments made by this*
14 *section shall apply to taxable years of foreign corporations*
15 *beginning after December 31, 2006, and to taxable years*
16 *of United States shareholders with or within which such*
17 *taxable years of foreign corporations end.*

18 **SEC. 222. LOOK-THRU TREATMENT OF PAYMENTS BETWEEN**
19 **RELATED CONTROLLED FOREIGN CORPORA-**
20 **TIONS UNDER FOREIGN PERSONAL HOLDING**
21 **COMPANY INCOME RULES.**

22 *(a) IN GENERAL.—Subsection (c) of section 954, as*
23 *amended by this Act, is amended by adding after para-*
24 *graph (4) the following new paragraph:*

1 “(5) *LOOK-THRU IN THE CASE OF RELATED CON-*
2 *TROLLED FOREIGN CORPORATIONS.*—For purposes of
3 *this subsection, dividends, interest, rents, and royal-*
4 *ties received or accrued from a controlled foreign cor-*
5 *poration which is a related person (as defined in sub-*
6 *section (b)(9)) shall not be treated as foreign personal*
7 *holding company income to the extent attributable or*
8 *properly allocable (determined under rules similar to*
9 *the rules of subparagraphs (C) and (D) of section*
10 *904(d)(3)) to income of the related person which is*
11 *not subpart F income (as defined in section 952). The*
12 *Secretary shall prescribe such regulations as may be*
13 *appropriate to prevent the abuse of the purposes of*
14 *this paragraph.”.*

15 (b) *EFFECTIVE DATE.*—The amendment made by this
16 *section shall apply to taxable years of foreign corporations*
17 *beginning after December 31, 2004, and to taxable years*
18 *of United States shareholders with or within which such*
19 *taxable years of foreign corporations end.*

20 **SEC. 223. LOOK-THRU TREATMENT FOR SALES OF PART-**
21 **NEERSHIP INTERESTS.**

22 (a) *IN GENERAL.*—Section 954(c) (defining foreign
23 *personal holding company income), as amended by this Act,*
24 *is amended by adding after paragraph (5) the following*
25 *new paragraph:*

1 “(6) *LOOK-THRU RULE FOR CERTAIN PARTNER-*
2 *SHIP SALES.*—

3 “(A) *IN GENERAL.*—*In the case of any sale*
4 *by a controlled foreign corporation of an interest*
5 *in a partnership with respect to which such cor-*
6 *poration is a 25-percent owner, such corporation*
7 *shall be treated for purposes of this subsection as*
8 *selling the proportionate share of the assets of the*
9 *partnership attributable to such interest. The*
10 *Secretary shall prescribe such regulations as*
11 *may be appropriate to prevent abuse of the pur-*
12 *poses of this paragraph, including regulations*
13 *providing for coordination of this paragraph*
14 *with the provisions of subchapter K.*

15 “(B) *25-PERCENT OWNER.*—*For purposes of*
16 *this paragraph, the term ‘25-percent owner’*
17 *means a controlled foreign corporation which*
18 *owns (within the meaning of section 958(a)) 25*
19 *percent or more of the capital or profits interest*
20 *in the partnership.”.*

21 (b) *EFFECTIVE DATE.*—*The amendment made by this*
22 *section shall apply to taxable years of foreign corporations*
23 *beginning after December 31, 2004, and to taxable years*
24 *of United States shareholders with or within which such*
25 *taxable years of foreign corporations end.*

1 **SEC. 224. ELECTION NOT TO USE AVERAGE EXCHANGE**
2 **RATE FOR FOREIGN TAX PAID OTHER THAN**
3 **IN FUNCTIONAL CURRENCY.**

4 (a) *IN GENERAL.*—Paragraph (1) of section 986(a)
5 (relating to determination of foreign taxes and foreign cor-
6 poration’s earnings and profits) is amended by redesi-
7 gnating subparagraph (D) as subparagraph (E) and by in-
8 serting after subparagraph (C) the following new subpara-
9 graph:

10 “(D) *ELECTIVE EXCEPTION FOR TAXES*
11 *PAID OTHER THAN IN FUNCTIONAL CURRENCY.*—

12 “(i) *IN GENERAL.*—At the election of
13 the taxpayer, subparagraph (A) shall not
14 apply to any foreign income taxes the li-
15 ability for which is denominated in any
16 currency other than in the taxpayer’s func-
17 tional currency.

18 “(ii) *APPLICATION TO QUALIFIED*
19 *BUSINESS UNITS.*—An election under this
20 subparagraph may apply to foreign income
21 taxes attributable to a qualified business
22 unit in accordance with regulations pre-
23 scribed by the Secretary.

24 “(iii) *ELECTION.*—Any such election
25 shall apply to the taxable year for which
26 made and all subsequent taxable years un-

1 less revoked with the consent of the Sec-
2 retary.”.

3 (b) *EFFECTIVE DATE.*—The amendments made by this
4 section shall apply to taxable years beginning after Decem-
5 ber 31, 2004.

6 **SEC. 225. TREATMENT OF INCOME TAX BASE DIFFERENCES.**

7 (a) *IN GENERAL.*—Paragraph (2) of section 904(d) is
8 amended by redesignating subparagraphs (H) and (I) as
9 subparagraphs (I) and (J), respectively, and by inserting
10 after subparagraph (G) the following new subparagraph:

11 “(H) *TREATMENT OF INCOME TAX BASE*
12 *DIFFERENCES.*—

13 “(i) *IN GENERAL.*—A taxpayer may
14 elect to treat tax imposed under the law of
15 a foreign country or possession of the
16 United States on an amount which does not
17 constitute income under United States tax
18 principles as tax imposed on income de-
19 scribed in subparagraph (C) or (I) of para-
20 graph (1).

21 “(ii) *ELECTION IRREVOCABLE.*—Any
22 such election shall apply to the taxable year
23 for which made and all subsequent taxable
24 years unless revoked with the consent of the
25 Secretary.”.

1 (b) *EFFECTIVE DATE.*—*The amendments made by this*
2 *section shall apply to taxable years ending after the date*
3 *of the enactment of this Act.*

4 **SEC. 226. MODIFICATION OF EXCEPTIONS UNDER SUBPART**
5 **F FOR ACTIVE FINANCING.**

6 (a) *IN GENERAL.*—*Section 954(h)(3) is amended by*
7 *adding at the end the following:*

8 “(E) *DIRECT CONDUCT OF ACTIVITIES.*—
9 *For purposes of subparagraph (A)(ii)(II), an ac-*
10 *tivity shall be treated as conducted directly by*
11 *an eligible controlled foreign corporation or*
12 *qualified business unit in its home country if the*
13 *activity is performed by employees of a related*
14 *person and—*

15 “(i) *the related person is an eligible*
16 *controlled foreign corporation the home*
17 *country of which is the same as the home*
18 *country of the corporation or unit to which*
19 *subparagraph (A)(ii)(II) is being applied,*

20 “(ii) *the activity is performed in the*
21 *home country of the related person, and*

22 “(iii) *the related person is compensated*
23 *on an arm’s-length basis for the perform-*
24 *ance of the activity by its employees and*
25 *such compensation is treated as earned by*

1 *such person in its home country for pur-*
2 *poses of the home country's tax laws."*

3 **(b) EFFECTIVE DATE.**—*The amendment made by this*
4 *section shall apply to taxable years of such foreign corpora-*
5 *tions beginning after December 31, 2004, and to taxable*
6 *years of United States shareholders with or within which*
7 *such taxable years of such foreign corporations end.*

8 **SEC. 227. UNITED STATES PROPERTY NOT TO INCLUDE**
9 **CERTAIN ASSETS OF CONTROLLED FOREIGN**
10 **CORPORATION.**

11 **(a) IN GENERAL.**—*Section 956(c)(2) (relating to ex-*
12 *ceptions from property treated as United States property)*
13 *is amended by striking "and" at the end of subparagraph*
14 *(J), by striking the period at the end of subparagraph (K)*
15 *and inserting a semicolon, and by adding at the end the*
16 *following new subparagraphs:*

17 *"(L) securities acquired and held by a con-*
18 *trolled foreign corporation in the ordinary course*
19 *of its business as a dealer in securities if—*

20 *"(i) the dealer accounts for the securi-*
21 *ties as securities held primarily for sale to*
22 *customers in the ordinary course of busi-*
23 *ness, and*

24 *"(ii) the dealer disposes of the securi-*
25 *ties (or such securities mature while held by*

1 *the dealer) within a period consistent with*
2 *the holding of securities for sale to cus-*
3 *tomers in the ordinary course of business;*
4 *and*

5 “(M) *an obligation of a United States per-*
6 *son which—*

7 “(i) *is not a domestic corporation, and*

8 “(ii) *is not—*

9 “(I) *a United States shareholder*
10 *(as defined in section 951(b)) of the*
11 *controlled foreign corporation, or*

12 “(II) *a partnership, estate, or*
13 *trust in which the controlled foreign*
14 *corporation, or any related person (as*
15 *defined in section 954(d)(3)), is a*
16 *partner, beneficiary, or trustee imme-*
17 *diately after the acquisition of any ob-*
18 *ligation of such partnership, estate, or*
19 *trust by the controlled foreign corpora-*
20 *tion.”.*

21 (b) *CONFORMING AMENDMENT.—Section 956(c)(2) is*
22 *amended by striking “and (K)” in the last sentence and*
23 *inserting “, (K), and (L)”.*

24 (c) *EFFECTIVE DATE.—The amendments made by this*
25 *section shall apply to taxable years of foreign corporations*

1 *beginning after December 31, 2004, and to taxable years*
2 *of United States shareholders with or within which such*
3 *taxable years of foreign corporations end.*

4 **SEC. 228. PROVIDE EQUAL TREATMENT FOR INTEREST PAID**
5 **BY FOREIGN PARTNERSHIPS AND FOREIGN**
6 **CORPORATIONS.**

7 (a) *IN GENERAL.*—*Paragraph (1) of section 861(a) is*
8 *amended by striking “and” at the end of subparagraph (A),*
9 *by striking the period at the end of subparagraph (B) and*
10 *inserting “, and”, and by adding at the end the following*
11 *new subparagraph:*

12 “(C) *in the case of a foreign partnership in*
13 *which United States persons do not hold directly*
14 *or indirectly 20 percent or more of either the*
15 *capital or profits interests, any interest not paid*
16 *by a trade or business engaged in by the partner-*
17 *ship in the United States and not allocable to*
18 *income which is effectively connected (or treated*
19 *as effectively connected) with the conduct of a*
20 *trade or business in the United States.”.*

21 (b) *EFFECTIVE DATE.*—*The amendments made by this*
22 *section shall apply to taxable years beginning after Decem-*
23 *ber 31, 2003.*

1 **SEC. 229. CLARIFICATION OF TREATMENT OF CERTAIN**
2 **TRANSFERS OF INTANGIBLE PROPERTY.**

3 (a) *IN GENERAL.*—Subparagraph (C) of section
4 367(d)(2) is amended by adding at the end the following
5 new sentence: “For purposes of applying section 904(d),
6 any such amount shall be treated in the same manner as
7 if such amount were a royalty.”.

8 (b) *EFFECTIVE DATE.*—The amendment made by this
9 section shall apply to amounts treated as received pursuant
10 to section 367(d)(2) of the Internal Revenue Code of 1986
11 on or after August 5, 1997.

12 **SEC. 230. MODIFICATION OF THE TREATMENT OF CERTAIN**
13 **REIT DISTRIBUTIONS ATTRIBUTABLE TO**
14 **GAIN FROM SALES OR EXCHANGES OF**
15 **UNITED STATES REAL PROPERTY INTERESTS.**

16 (a) *IN GENERAL.*—Paragraph (1) of section 897(h)
17 (relating to look-through of distributions) is amended by
18 adding at the end the following new sentence: “Notwith-
19 standing the preceding sentence, any distribution by a
20 REIT with respect to any class of stock which is regularly
21 traded on an established securities market located in the
22 United States shall not be treated as gain recognized from
23 the sale or exchange of a United States real property inter-
24 est if the shareholder did not own more than 5 percent of
25 such class of stock at any time during the taxable year.”.

1 **(b) CONFORMING AMENDMENT.**—*Paragraph (3) of sec-*
2 *tion 857(b) (relating to capital gains) is amended by add-*
3 *ing at the end the following new subparagraph:*

4 “(F) **CERTAIN DISTRIBUTIONS.**—*In the case*
5 *of a shareholder of a real estate investment trust*
6 *to whom section 897 does not apply by reason of*
7 *the second sentence of section 897(h)(1), the*
8 *amount which would be included in computing*
9 *long-term capital gains for such shareholder*
10 *under subparagraph (B) or (D) (without regard*
11 *to this subparagraph)—*

12 “(i) *shall not be included in computing*
13 *such shareholder’s long-term capital gains,*
14 *and*

15 “(ii) *shall be included in such share-*
16 *holder’s gross income as a dividend from the*
17 *real estate investment trust.”.*

18 **(c) EFFECTIVE DATE.**—*The amendments made by this*
19 *section shall apply to taxable years beginning after the date*
20 *of the enactment of this Act.*

21 **SEC. 231. TOLL TAX ON EXCESS QUALIFIED FOREIGN DIS-**
22 **TRIBUTION AMOUNT.**

23 **(a) IN GENERAL.**—*Subpart F of part III of subchapter*
24 *N of chapter 1 is amended by adding at the end the fol-*
25 *lowing new section:*

1 **“SEC. 965. TOLL TAX IMPOSED ON EXCESS QUALIFIED FOR-**
2 **EIGN DISTRIBUTION AMOUNT.**

3 *“(a) TOLL TAX IMPOSED ON EXCESS QUALIFIED FOR-*
4 *EIGN DISTRIBUTION AMOUNT.—If a corporation elects the*
5 *application of this section, a tax shall be imposed on the*
6 *taxpayer in an amount equal to 5.25 percent of—*

7 *“(1) the taxpayer’s excess qualified foreign dis-*
8 *tribution amount, and*

9 *“(2) the amount determined under section 78*
10 *which is attributable to such excess qualified foreign*
11 *distribution amount.*

12 *Such tax shall be imposed in lieu of the tax imposed under*
13 *section 11 or 55 on the amounts described in paragraphs*
14 *(1) and (2) for such taxable year.*

15 *“(b) EXCESS QUALIFIED FOREIGN DISTRIBUTION*
16 *AMOUNT.—For purposes of this section—*

17 *“(1) IN GENERAL.—The term ‘excess qualified*
18 *foreign distribution amount’ means the excess (if any)*
19 *of—*

20 *“(A) the aggregate dividends received by the*
21 *taxpayer during the taxable year which are—*

22 *“(i) from 1 or more corporations which*
23 *are controlled foreign corporations in which*
24 *the taxpayer is a United States shareholder*
25 *on the date such dividends are paid, and*

1 “(ii) described in a domestic reinvest-
2 ment plan which—

3 “(I) is approved by the taxpayer’s
4 president, chief executive officer, or
5 comparable official before the payment
6 of such dividends and subsequently ap-
7 proved by the taxpayer’s board of di-
8 rectors, management committee, execu-
9 tive committee, or similar body, and

10 “(II) provides for the reinvestment
11 of such dividends in the United States
12 (other than as payment for executive
13 compensation), including as a source
14 for the funding of worker hiring and
15 training, infrastructure, research and
16 development, capital investments, or
17 the financial stabilization of the cor-
18 poration for the purposes of job reten-
19 tion or creation, over

20 “(B) the base dividend amount.

21 “(2) *BASE DIVIDEND AMOUNT.*—The term ‘base
22 dividend amount’ means an amount designated under
23 subsection (c)(7), but not less than the average
24 amount of dividends received during the fixed base
25 period from 1 or more corporations which are con-

1 *trolled foreign corporations in which the taxpayer is*
2 *a United States shareholder on the date such divi-*
3 *dends are paid.*

4 “(3) *FIXED BASE PERIOD.*—

5 “(A) *IN GENERAL.*—*The term ‘fixed base pe-*
6 *riod’ means each of 3 taxable years which are*
7 *among the 5 most recent taxable years of the tax-*
8 *payer ending on or before December 31, 2002,*
9 *determined by disregarding—*

10 “(i) *the 1 taxable year for which the*
11 *taxpayer had the highest amount of divi-*
12 *dends from 1 or more corporations which*
13 *are controlled foreign corporations relative*
14 *to the other 4 taxable years, and*

15 “(ii) *the 1 taxable year for which the*
16 *taxpayer had the lowest amount of divi-*
17 *dends from such corporations relative to the*
18 *other 4 taxable years.*

19 “(B) *SHORTER PERIOD.*—*If the taxpayer*
20 *has fewer than 5 taxable years ending on or be-*
21 *fore December 31, 2002, then in lieu of applying*
22 *subparagraph (A), the fixed base period shall in-*
23 *clude all the taxable years of the taxpayer ending*
24 *on or before December 31, 2002.*

1 “(c) *DEFINITIONS AND SPECIAL RULES.—For pur-*
2 *poses of this section—*

3 “(1) *DIVIDENDS.—The term ‘dividend’ has the*
4 *meaning given such term by section 316, except that*
5 *the term shall include amounts described in section*
6 *951(a)(1)(B), but shall not include amounts described*
7 *in sections 78 and 959.*

8 “(2) *CONTROLLED FOREIGN CORPORATIONS AND*
9 *UNITED STATES SHAREHOLDERS.—The term ‘con-*
10 *trolled foreign corporation’ has the meaning given*
11 *such term by section 957(a) and the term ‘United*
12 *States shareholder’ has the meaning given such term*
13 *by section 951(b).*

14 “(3) *FOREIGN TAX CREDITS.—The amount of*
15 *any income, war, profits, or excess profit taxes paid*
16 *(or deemed paid under sections 902 and 960) or ac-*
17 *crued by the taxpayer with respect to the excess quali-*
18 *fied foreign distribution amount for which a credit*
19 *would be allowable under section 901 in the absence*
20 *of this section, shall be reduced by 85 percent. No de-*
21 *duction shall be allowed under this chapter for the*
22 *portion of any tax for which credit is not allowable*
23 *by reason of the preceding sentence.*

1 “(4) *FOREIGN TAX CREDIT LIMITATION.*—*For*
2 *purposes of section 904, there shall be disregarded 85*
3 *percent of—*

4 “(A) *the excess qualified foreign distribution*
5 *amount,*

6 “(B) *the amount determined under section*
7 *78 which is attributable to such excess qualified*
8 *foreign distribution amount, and*

9 “(C) *the amounts (including assets, gross*
10 *income, and other relevant bases of apportion-*
11 *ment) which are attributable to the excess quali-*
12 *fied foreign distribution amount which would,*
13 *determined without regard to this section, be*
14 *used to apportion the expenses, losses, and deduc-*
15 *tions of the taxpayer under section 861 and 864*
16 *in determining its taxable income from sources*
17 *without the United States.*

18 *For purposes of applying subparagraph (C), the prin-*
19 *ciples of section 864(e)(3)(A) shall apply.*

20 “(5) *TREATMENT OF ACQUISITIONS AND DISPOSI-*
21 *TIONS.*—*Rules similar to the rules of section 41(f)(3)*
22 *shall apply in the case of acquisitions or dispositions*
23 *of controlled foreign corporations occurring on or*
24 *after the first day of the earliest taxable year taken*
25 *into account in determining the fixed base period.*

1 “(6) *TREATMENT OF CONSOLIDATED GROUPS.—*
2 *Members of an affiliated group of corporations filing*
3 *a consolidated return under section 1501 shall be*
4 *treated as a single taxpayer for purposes of this sec-*
5 *tion.*

6 “(7) *DESIGNATION OF DIVIDENDS.—Subject to*
7 *subsection (b)(2), the taxpayer shall designate the*
8 *particular dividends received during the taxable year*
9 *from 1 or more corporations which are controlled for-*
10 *foreign corporations in which it is a United States*
11 *shareholder which are dividends excluded from the ex-*
12 *cess qualified foreign distribution amount. The total*
13 *amount of such designated dividends shall equal the*
14 *base dividend amount.*

15 “(8) *TREATMENT OF EXPENSES, LOSSES, AND*
16 *DEDUCTIONS.—Any expenses, losses, or deductions of*
17 *the taxpayer allowable under subchapter B—*

18 “(A) *shall not be applied to reduce the*
19 *amounts described in subsection (a)(1), and*

20 “(B) *shall be applied to reduce other income*
21 *of the taxpayer (determined without regard to*
22 *the amounts described in subsection (a)(1)).*

23 “(d) *ELECTION.—*

24 “(1) *IN GENERAL.—An election under this sec-*
25 *tion shall be made on the taxpayer’s timely filed in-*

1 *come tax return for the first taxable year (determined*
2 *by taking extensions into account) ending 120 days or*
3 *more after the date of the enactment of this section,*
4 *and, once made, may be revoked only with the consent*
5 *of the Secretary.*

6 “(2) *ALL CONTROLLED FOREIGN CORPORA-*
7 *TIONS.—The election shall apply to all corporations*
8 *which are controlled foreign corporations in which the*
9 *taxpayer is a United States shareholder during the*
10 *taxable year.*

11 “(3) *CONSOLIDATED GROUPS.—If a taxpayer is*
12 *a member of an affiliated group of corporations filing*
13 *a consolidated return under section 1501 for the tax-*
14 *able year, an election under this section shall be made*
15 *by the common parent of the affiliated group which*
16 *includes the taxpayer and shall apply to all members*
17 *of the affiliated group.*

18 “(e) *REGULATIONS.—The Secretary shall prescribe*
19 *such regulations as may be necessary and appropriate to*
20 *carry out the purposes of this section, including regulations*
21 *under section 55 and regulations addressing corporations*
22 *which, during the fixed base period or thereafter, join or*
23 *leave an affiliated group of corporations filing a consoli-*
24 *dated return.”.*

1 (b) *CONFORMING AMENDMENT.*—*The table of sections*
2 *for subpart F of part III of subchapter N of chapter 1 is*
3 *amended by adding at the end the following new item:*

“Sec. 965. Toll tax imposed on excess qualified foreign distribution amount.”.

4 (c) *EFFECTIVE DATE.*—*The amendments made by this*
5 *section shall apply only to the first taxable year of the elect-*
6 *ing taxpayer ending 120 days or more after the date of the*
7 *enactment of this Act.*

8 **SEC. 232. EXCLUSION OF INCOME DERIVED FROM CERTAIN**
9 **WAGERS ON HORSE RACES AND DOG RACES**
10 **FROM GROSS INCOME OF NONRESIDENT**
11 **ALIEN INDIVIDUALS.**

12 (a) *IN GENERAL.*—*Subsection (b) of section 872 (relat-*
13 *ing to exclusions) is amended by redesignating paragraphs*
14 *(5), (6), and (7) as paragraphs (6), (7), and (8), respec-*
15 *tively, and inserting after paragraph (4) the following new*
16 *paragraph:*

17 *“(5) INCOME DERIVED FROM WAGERING TRANS-*
18 *ACTIONS IN CERTAIN PARIMUTUEL POOLS.*—*Gross in-*
19 *come derived by a nonresident alien individual from*
20 *a legal wagering transaction initiated outside the*
21 *United States in a parimutuel pool with respect to a*
22 *live horse race or dog race in the United States.”.*

1 (b) *CONFORMING AMENDMENT.*—Section 883(a)(4) is
2 amended by striking “(5), (6), and (7)” and inserting “(6),
3 (7), and (8)”.

4 (c) *EFFECTIVE DATE.*—The amendments made by this
5 section shall apply to wagers made after the date of the en-
6 actment of this Act.

7 **SEC. 233. EXCEPTION TO WITHHOLDING TAX FOR PUERTO**
8 **RICO CORPORATIONS.**

9 (a) *IN GENERAL.*—Subsection (b) of section 881 is
10 amended by redesignating paragraph (2) as paragraph (3)
11 and by inserting after paragraph (1) the following new
12 paragraph:

13 “(2) *COMMONWEALTH OF PUERTO RICO.*—If
14 dividends are received during a taxable year by a
15 corporation—

16 “(A) created or organized in, or under the
17 law of, the Commonwealth of Puerto Rico, and

18 “(B) with respect to which the requirements
19 of subparagraphs (A), (B), and (C) of paragraph
20 (1) are met for the taxable year,

21 subsection (a) shall be applied for such taxable year
22 by substituting ‘10 percent’ for ‘30 percent’.”.

23 (b) *WITHHOLDING.*—Subsection (c) of section 1442
24 (relating to withholding of tax on foreign corporations) is
25 amended—

1 (1) *by striking “For purposes” and inserting the*
2 *following:*

3 “(1) *GUAM, AMERICAN SAMOA, THE NORTHERN*
4 *MARIANA ISLANDS, AND THE VIRGIN ISLANDS.—For*
5 *purposes”, and*

6 (2) *by adding at the end the following new para-*
7 *graph:*

8 “(2) *COMMONWEALTH OF PUERTO RICO.—If*
9 *dividends are received during a taxable year by a*
10 *corporation—*

11 *“(A) created or organized in, or under the*
12 *law of, the Commonwealth of Puerto Rico, and*

13 *“(B) with respect to which the requirements*
14 *of subparagraphs (A), (B), and (C) of section*

15 *881(b)(1) are met for the taxable year,*
16 *subsection (a) shall be applied for such taxable year*
17 *by substituting ‘10 percent’ for ‘30 percent’.”.*

18 (b) *CONFORMING AMENDMENTS.—*

19 (1) *Subsection (b) of section 881 is amended by*
20 *striking “GUAM AND VIRGIN ISLANDS CORPORA-*
21 *TIONS” in the heading and inserting “POSSESSIONS”.*

22 (2) *Paragraph (1) of section 881(b) is amended*
23 *by striking “IN GENERAL” in the heading and insert-*
24 *ing “GUAM, AMERICAN SAMOA, THE NORTHERN MAR-*
25 *IANA ISLANDS, AND THE VIRGIN ISLANDS”.*

1 (c) *EFFECTIVE DATE.*—*The amendments made by this*
2 *section shall apply to dividends paid after the date of the*
3 *enactment of this Act.*

4 **SEC. 234. REPORT ON WTO DISPUTE SETTLEMENT PANELS**
5 **AND THE APPELLATE BODY.**

6 *Not later than March 31, 2004, the Secretary of Com-*
7 *merce, in consultation with the United States Trade Rep-*
8 *resentative, shall transmit a report to the Committee on Fi-*
9 *nance of the Senate and the Committee on Ways and Means*
10 *of the House of Representatives, regarding whether dispute*
11 *settlement panels and the Appellate Body of the World*
12 *Trade Organization have—*

13 (1) *added to or diminished the rights of the*
14 *United States by imposing obligations or restrictions*
15 *on the use of antidumping, countervailing, and safe-*
16 *guard measures not agreed to under the Agreement on*
17 *Implementation of Article VI of the General Agree-*
18 *ment on Tariffs and Trade of 1994, the Agreement on*
19 *Subsidies and Countervailing Measures, and the*
20 *Agreement on Safeguards;*

21 (2) *appropriately applied the standard of review*
22 *contained in Article 17.6 of the Agreement on Imple-*
23 *mentation of Article VI of the General Agreement on*
24 *Tariffs and Trade of 1994; or*

1 (3) *exceeded their authority or terms of reference*
2 *under the Agreements referred to in paragraph (1).*

3 **SEC. 235. STUDY OF IMPACT OF INTERNATIONAL TAX LAWS**
4 **ON TAXPAYERS OTHER THAN LARGE COR-**
5 **PORATIONS.**

6 (a) *STUDY.*—*The Secretary of the Treasury or the Sec-*
7 *retary's delegate shall conduct a study of the impact of Fed-*
8 *eral international tax rules on taxpayers other than large*
9 *corporations, including the burdens placed on such tax-*
10 *payers in complying with such rules.*

11 (b) *REPORT.*—*Not later than 180 days after the date*
12 *of the enactment of this Act, the Secretary shall report to*
13 *the Committee on Finance of the Senate and the Committee*
14 *on Ways and Means of the House of Representatives the*
15 *results of the study conducted under subsection (a), includ-*
16 *ing any recommendations for legislative or administrative*
17 *changes to reduce the compliance burden on taxpayers other*
18 *than large corporations and for such other purposes as the*
19 *Secretary determines appropriate.*

20 **SEC. 236. CONSULTATIVE ROLE FOR SENATE COMMITTEE**
21 **ON FINANCE IN CONNECTION WITH THE RE-**
22 **VIEW OF PROPOSED TAX TREATIES.**

23 *Paragraph 1(j) of Rule XXV of the Standing Rules of*
24 *the Senate is amended by adding at the end the following:*

1 “(3)(A) *Notwithstanding any other rule of the Senate,*
2 *the Committee on Foreign Relations shall consult with the*
3 *Committee on Finance with respect to any proposed treaty*
4 *on taxation prior to reporting such treaty to the Senate.*

5 “(B) *The Committee on Foreign Relations shall request*
6 *in writing the views of the Committee on Finance with re-*
7 *spect to any proposed treaty on taxation which is referred*
8 *to the Committee on Foreign Relations. Not less than 120*
9 *days after the date on which such request is made, the Com-*
10 *mittee on Finance shall respond to such request in writing.*
11 *If the Committee on Finance does not provide such written*
12 *response during such 120 day period, the Committee on Fi-*
13 *nance shall be deemed to have waived the opportunity to*
14 *submit such views.*

15 “(C) *The Committee on Foreign Relations shall con-*
16 *sider the views submitted by the Committee on Finance and*
17 *shall include such views in any report of the treaty to the*
18 *Senate.”.*

1 **TITLE III—DOMESTIC MANUFAC-**
2 **TURING AND BUSINESS PRO-**
3 **VISIONS**

4 **Subtitle A—General Provisions**

5 **SEC. 301. EXPANSION OF QUALIFIED SMALL-ISSUE BOND**
6 **PROGRAM.**

7 (a) *IN GENERAL.*—Subparagraph (F) of section
8 144(a)(4) (relating to \$10,000,000 limit in certain cases)
9 is amended to read as follows:

10 “(F) *ADDITIONAL CAPITAL EXPENDITURES*
11 *NOT TAKEN INTO ACCOUNT.*—With respect to any
12 issue, in addition to any capital expenditure de-
13 scribed in subparagraph (C), capital expendi-
14 tures of not to exceed \$10,000,000 shall not be
15 taken into account for purposes of applying sub-
16 paragraph (A)(ii).”.

17 (b) *EFFECTIVE DATE.*—The amendment made by this
18 section shall apply to bonds issued after the date of the en-
19 actment of this Act.

20 **SEC. 302. EXPENSING OF BROADBAND INTERNET ACCESS**
21 **EXPENDITURES.**

22 (a) *IN GENERAL.*—Part VI of subchapter B of chapter
23 1 (relating to itemized deductions for individuals and cor-
24 porations) is amended by inserting after section 190 the fol-
25 lowing new section:

1 **“SEC. 191. BROADBAND EXPENDITURES.**

2 “(a) *TREATMENT OF EXPENDITURES.*—

3 “(1) *IN GENERAL.*—*A taxpayer may elect to*
4 *treat any qualified broadband expenditure which is*
5 *paid or incurred by the taxpayer as an expense which*
6 *is not chargeable to capital account. Any expenditure*
7 *which is so treated shall be allowed as a deduction.*

8 “(2) *ELECTION.*—*An election under paragraph*
9 *(1) shall be made at such time and in such manner*
10 *as the Secretary may prescribe by regulation.*

11 “(b) *QUALIFIED BROADBAND EXPENDITURES.*—*For*
12 *purposes of this section—*

13 “(1) *IN GENERAL.*—*The term ‘qualified*
14 *broadband expenditure’ means, with respect to any*
15 *taxable year, any direct or indirect costs incurred*
16 *during 2004 and properly taken into account for such*
17 *taxable year with respect to—*

18 “(A) *the purchase or installation of quali-*
19 *fied equipment (including any upgrades thereto),*
20 *and*

21 “(B) *the connection of such qualified equip-*
22 *ment to any qualified subscriber.*

23 “(2) *CERTAIN SATELLITE EXPENDITURES EX-*
24 *CLUDED.*—*Such term shall not include any costs in-*
25 *curring with respect to the launching of any satellite*
26 *equipment.*

1 “(3) *LEASED EQUIPMENT.*—*Such term shall in-*
2 *clude so much of the purchase price paid by the lessor*
3 *of qualified equipment subject to a lease described in*
4 *subsection (c)(2)(B) as is attributable to expenditures*
5 *incurred by the lessee which would otherwise be de-*
6 *scribed in paragraph (1).*

7 “(c) *WHEN EXPENDITURES TAKEN INTO ACCOUNT.*—
8 *For purposes of this section—*

9 “(1) *IN GENERAL.*—*Qualified broadband expend-*
10 *itures with respect to qualified equipment shall be*
11 *taken into account with respect to the first taxable*
12 *year in which—*

13 “(A) *current generation broadband services*
14 *are provided through such equipment to qualified*
15 *subscribers, or*

16 “(B) *next generation broadband services are*
17 *provided through such equipment to qualified*
18 *subscribers.*

19 “(2) *LIMITATION.*—

20 “(A) *IN GENERAL.*—*Qualified expenditures*
21 *shall be taken into account under paragraph (1)*
22 *only with respect to qualified equipment—*

23 “(i) *the original use of which com-*
24 *mences with the taxpayer, and*

25 “(ii) *which is placed in service,*

1 *after December 31, 2003.*

2 “(B) *SALE-LEASEBACKS.—For purposes of*
3 *subparagraph (A), if property—*

4 “(i) *is originally placed in service*
5 *after December 31, 2003, by any person,*
6 *and*

7 “(ii) *sold and leased back by such per-*
8 *son within 3 months after the date such*
9 *property was originally placed in service,*
10 *such property shall be treated as originally*
11 *placed in service not earlier than the date on*
12 *which such property is used under the leaseback*
13 *referred to in clause (ii).*

14 “(d) *SPECIAL ALLOCATION RULES.—*

15 “(1) *CURRENT GENERATION BROADBAND SERV-*
16 *ICES.—For purposes of determining the amount of*
17 *qualified broadband expenditures under subsection*
18 *(a)(1) with respect to qualified equipment through*
19 *which current generation broadband services are pro-*
20 *vided, if the qualified equipment is capable of serving*
21 *both qualified subscribers and other subscribers, the*
22 *qualified broadband expenditures shall be multiplied*
23 *by a fraction—*

24 “(A) *the numerator of which is the sum of*
25 *the number of potential qualified subscribers*

1 *within the rural areas and the underserved areas*
2 *which the equipment is capable of serving with*
3 *current generation broadband services, and*

4 *“(B) the denominator of which is the total*
5 *potential subscriber population of the area which*
6 *the equipment is capable of serving with current*
7 *generation broadband services.*

8 “(2) *NEXT GENERATION BROADBAND SERV-*
9 *ICES.—For purposes of determining the amount of*
10 *qualified broadband expenditures under subsection*
11 *(a)(1) with respect to qualified equipment through*
12 *which next generation broadband services are pro-*
13 *vided, if the qualified equipment is capable of serving*
14 *both qualified subscribers and other subscribers, the*
15 *qualified expenditures shall be multiplied by a*
16 *fraction—*

17 *“(A) the numerator of which is the sum*
18 *of—*

19 *“(i) the number of potential qualified*
20 *subscribers within the rural areas and un-*
21 *derserved areas, plus*

22 *“(ii) the number of potential qualified*
23 *subscribers within the area consisting only*
24 *of residential subscribers not described in*
25 *clause (i),*

1 *which the equipment is capable of serving with*
2 *next generation broadband services, and*

3 “(B) *the denominator of which is the total*
4 *potential subscriber population of the area which*
5 *the equipment is capable of serving with next*
6 *generation broadband services.*

7 “(e) *DEFINITIONS.—For purposes of this section—*

8 “(1) *ANTENNA.—The term ‘antenna’ means any*
9 *device used to transmit or receive signals through the*
10 *electromagnetic spectrum, including satellite equip-*
11 *ment.*

12 “(2) *CABLE OPERATOR.—The term ‘cable oper-*
13 *ator’ has the meaning given such term by section*
14 *602(5) of the Communications Act of 1934 (47 U.S.C.*
15 *522(5)).*

16 “(3) *COMMERCIAL MOBILE SERVICE CARRIER.—*
17 *The term ‘commercial mobile service carrier’ means*
18 *any person authorized to provide commercial mobile*
19 *radio service as defined in section 20.3 of title 47,*
20 *Code of Federal Regulations.*

21 “(4) *CURRENT GENERATION BROADBAND SERV-*
22 *ICE.—The term ‘current generation broadband serv-*
23 *ice’ means the transmission of signals at a rate of at*
24 *least 1,000,000 bits per second to the subscriber and*
25 *at least 128,000 bits per second from the subscriber.*

1 “(5) *MULTIPLEXING OR DEMULTIPLEXING.*—The
2 term ‘multiplexing’ means the transmission of 2 or
3 more signals over a single channel, and the term
4 ‘demultiplexing’ means the separation of 2 or more
5 signals previously combined by compatible multi-
6 plexing equipment.

7 “(6) *NEXT GENERATION BROADBAND SERVICE.*—
8 The term ‘next generation broadband service’ means
9 the transmission of signals at a rate of at least
10 22,000,000 bits per second to the subscriber and at
11 least 5,000,000 bits per second from the subscriber.

12 “(7) *NONRESIDENTIAL SUBSCRIBER.*—The term
13 ‘nonresidential subscriber’ means any person who
14 purchases broadband services which are delivered to
15 the permanent place of business of such person.

16 “(8) *OPEN VIDEO SYSTEM OPERATOR.*—The term
17 ‘open video system operator’ means any person au-
18 thorized to provide service under section 653 of the
19 Communications Act of 1934 (47 U.S.C. 573).

20 “(9) *OTHER WIRELESS CARRIER.*—The term
21 ‘other wireless carrier’ means any person (other than
22 a telecommunications carrier, commercial mobile
23 service carrier, cable operator, open video system op-
24 erator, or satellite carrier) providing current genera-
25 tion broadband services or next generation broadband

1 *service to subscribers through the radio transmission*
2 *of energy.*

3 “(10) *PACKET SWITCHING.*—*The term ‘packet*
4 *switching’ means controlling or routing the path of*
5 *any digitized transmission signal which is assembled*
6 *into packets or cells.*

7 “(11) *PROVIDER.*—*The term ‘provider’ means,*
8 *with respect to any qualified equipment—*

9 “(A) *a cable operator,*

10 “(B) *a commercial mobile service carrier,*

11 “(C) *an open video system operator,*

12 “(D) *a satellite carrier,*

13 “(E) *a telecommunications carrier, or*

14 “(F) *any other wireless carrier,*

15 *providing current generation broadband services or*
16 *next generation broadband services to subscribers*
17 *through such qualified equipment.*

18 “(12) *PROVISION OF SERVICES.*—*A provider*
19 *shall be treated as providing services to 1 or more*
20 *subscribers if—*

21 “(A) *such a subscriber has been passed by*
22 *the provider’s equipment and can be connected to*
23 *such equipment for a standard connection fee,*

24 “(B) *the provider is physically able to de-*
25 *liver current generation broadband services or*

1 *next generation broadband services, as applica-*
2 *ble, to such a subscriber without making more*
3 *than an insignificant investment with respect to*
4 *such subscriber,*

5 “(C) *the provider has made reasonable ef-*
6 *forts to make such subscribers aware of the avail-*
7 *ability of such services,*

8 “(D) *such services have been purchased by*
9 *1 or more such subscribers, and*

10 “(E) *such services are made available to*
11 *such subscribers at average prices comparable to*
12 *those at which the provider makes available*
13 *similar services in any areas in which the pro-*
14 *vider makes available such services.*

15 “(13) *QUALIFIED EQUIPMENT.—*

16 “(A) *IN GENERAL.—The term ‘qualified*
17 *equipment’ means equipment which provides*
18 *current generation broadband services or next*
19 *generation broadband services—*

20 “(i) *at least a majority of the time*
21 *during periods of maximum demand to*
22 *each subscriber who is utilizing such serv-*
23 *ices, and*

24 “(ii) *in a manner substantially the*
25 *same as such services are provided by the*

1 *provider to subscribers through equipment*
2 *with respect to which no deduction is al-*
3 *lowed under subsection (a)(1).*

4 *“(B) ONLY CERTAIN INVESTMENT TAKEN*
5 *INTO ACCOUNT.—Except as provided in subpara-*
6 *graph (C) or (D), equipment shall be taken into*
7 *account under subparagraph (A) only to the ex-*
8 *tent it—*

9 *“(i) extends from the last point of*
10 *switching to the outside of the unit, build-*
11 *ing, dwelling, or office owned or leased by*
12 *a subscriber in the case of a telecommuni-*
13 *cations carrier,*

14 *“(ii) extends from the customer side of*
15 *the mobile telephone switching office to a*
16 *transmission/receive antenna (including*
17 *such antenna) owned or leased by a sub-*
18 *scriber in the case of a commercial mobile*
19 *service carrier,*

20 *“(iii) extends from the customer side of*
21 *the headend to the outside of the unit, build-*
22 *ing, dwelling, or office owned or leased by*
23 *a subscriber in the case of a cable operator*
24 *or open video system operator, or*

1 “(iv) extends from a transmission/re-
2 ceive antenna (including such antenna)
3 which transmits and receives signals to or
4 from multiple subscribers, to a trans-
5 mission/receive antenna (including such an-
6 tenna) on the outside of the unit, building,
7 dwelling, or office owned or leased by a sub-
8 scriber in the case of a satellite carrier or
9 other wireless carrier, unless such other
10 wireless carrier is also a telecommuni-
11 cations carrier.

12 “(C) *PACKET SWITCHING EQUIPMENT.*—
13 *Packet switching equipment, regardless of loca-*
14 *tion, shall be taken into account under subpara-*
15 *graph (A) only if it is deployed in connection*
16 *with equipment described in subparagraph (B)*
17 *and is uniquely designed to perform the function*
18 *of packet switching for current generation*
19 *broadband services or next generation broadband*
20 *services, but only if such packet switching is the*
21 *last in a series of such functions performed in*
22 *the transmission of a signal to a subscriber or*
23 *the first in a series of such functions performed*
24 *in the transmission of a signal from a sub-*
25 *scriber.*

1 “(D) *MULTIPLEXING AND DEMULTIPLEXING*
2 *EQUIPMENT.—Multiplexing and demultiplexing*
3 *equipment shall be taken into account under sub-*
4 *paragraph (A) only to the extent it is deployed*
5 *in connection with equipment described in sub-*
6 *paragraph (B) and is uniquely designed to per-*
7 *form the function of multiplexing and*
8 *demultiplexing packets or cells of data and mak-*
9 *ing associated application adaptations, but only if*
10 *such multiplexing or demultiplexing equipment*
11 *is located between packet switching equipment*
12 *described in subparagraph (C) and the sub-*
13 *scriber’s premises.*

14 “(14) *QUALIFIED SUBSCRIBER.—The term*
15 *‘qualified subscriber’ means—*

16 “(A) *with respect to the provision of current*
17 *generation broadband services—*

18 “(i) *any nonresidential subscriber*
19 *maintaining a permanent place of business*
20 *in a rural area or underserved area, or*

21 “(ii) *any residential subscriber resid-*
22 *ing in a dwelling located in a rural area or*
23 *underserved area which is not a saturated*
24 *market, and*

1 “(B) with respect to the provision of next
2 generation broadband services—

3 “(i) any nonresidential subscriber
4 maintaining a permanent place of business
5 in a rural area or underserved area, or

6 “(ii) any residential subscriber.

7 “(15) *RESIDENTIAL SUBSCRIBER.*—The term
8 ‘residential subscriber’ means any individual who
9 purchases broadband services which are delivered to
10 such individual’s dwelling.

11 “(16) *RURAL AREA.*—The term ‘rural area’
12 means any census tract which—

13 “(A) is not within 10 miles of any incor-
14 porated or census designated place containing
15 more than 25,000 people, and

16 “(B) is not within a county or county
17 equivalent which has an overall population den-
18 sity of more than 500 people per square mile of
19 land.

20 “(17) *RURAL SUBSCRIBER.*—The term ‘rural
21 subscriber’ means any residential subscriber residing
22 in a dwelling located in a rural area or nonresiden-
23 tial subscriber maintaining a permanent place of
24 business located in a rural area.

1 “(18) *SATELLITE CARRIER.*—*The term ‘satellite*
2 *carrier’ means any person using the facilities of a*
3 *satellite or satellite service licensed by the Federal*
4 *Communications Commission and operating in the*
5 *Fixed-Satellite Service under part 25 of title 47 of the*
6 *Code of Federal Regulations or the Direct Broadcast*
7 *Satellite Service under part 100 of title 47 of such*
8 *Code to establish and operate a channel of commu-*
9 *nications for distribution of signals, and owning or*
10 *leasing a capacity or service on a satellite in order*
11 *to provide such point-to-multipoint distribution.*

12 “(19) *SATURATED MARKET.*—*The term ‘satu-*
13 *rated market’ means any census tract in which, as of*
14 *the date of the enactment of this section—*

15 “(A) *current generation broadband services*
16 *have been provided by a single provider to 85*
17 *percent or more of the total number of potential*
18 *residential subscribers residing in dwellings lo-*
19 *cated within such census tract, and*

20 “(B) *such services can be utilized—*

21 “(i) *at least a majority of the time*
22 *during periods of maximum demand by*
23 *each such subscriber who is utilizing such*
24 *services, and*

1 “(ii) in a manner substantially the
2 same as such services are provided by the
3 provider to subscribers through equipment
4 with respect to which no deduction is al-
5 lowed under subsection (a)(1).

6 “(20) *SUBSCRIBER.*—The term ‘subscriber’
7 means any person who purchases current generation
8 broadband services or next generation broadband serv-
9 ices.

10 “(21) *TELECOMMUNICATIONS CARRIER.*—The
11 term ‘telecommunications carrier’ has the meaning
12 given such term by section 3(44) of the Communica-
13 tions Act of 1934 (47 U.S.C. 153(44)), but—

14 “(A) includes all members of an affiliated
15 group of which a telecommunications carrier is
16 a member, and

17 “(B) does not include a commercial mobile
18 service carrier.

19 “(22) *TOTAL POTENTIAL SUBSCRIBER POPU-*
20 *LATION.*—The term ‘total potential subscriber popu-
21 lation’ means, with respect to any area and based on
22 the most recent census data, the total number of po-
23 tential residential subscribers residing in dwellings
24 located in such area and potential nonresidential sub-

1 scribers maintaining permanent places of business lo-
2 cated in such area.

3 “(23) *UNDERSERVED AREA*.—The term ‘under-
4 served area’ means—

5 “(A) any census tract which is located in—

6 “(i) an empowerment zone or enter-
7 prise community designated under section
8 1391, or

9 “(ii) the District of Columbia Enter-
10 prise Zone established under section 1400,
11 or

12 “(B) any census tract—

13 “(i) the poverty level of which is at
14 least 30 percent (based on the most recent
15 census data), and

16 “(ii) the median family income of
17 which does not exceed—

18 “(I) in the case of a census tract
19 located in a metropolitan statistical
20 area, 70 percent of the greater of the
21 metropolitan area median family in-
22 come or the statewide median family
23 income, and

24 “(II) in the case of a census tract
25 located in a nonmetropolitan statis-

1 *tical area, 70 percent of the nonmetro-*
2 *politan statewide median family in-*
3 *come.*

4 “(24) *UNDERSERVED SUBSCRIBER.*—*The term*
5 *‘underserved subscriber’ means any residential sub-*
6 *scriber residing in a dwelling located in an under-*
7 *served area or nonresidential subscriber maintaining*
8 *a permanent place of business located in an under-*
9 *served area.*

10 “(f) *SPECIAL RULES.*—

11 “(1) *PROPERTY USED OUTSIDE THE UNITED*
12 *STATES, ETC., NOT QUALIFIED.*—*No expenditures*
13 *shall be taken into account under subsection (a)(1)*
14 *with respect to the portion of the cost of any property*
15 *referred to in section 50(b) or with respect to the por-*
16 *tion of the cost of any property specified in an elec-*
17 *tion under section 179.*

18 “(2) *BASIS REDUCTION.*—

19 “(A) *IN GENERAL.*—*For purposes of this*
20 *title, the basis of any property shall be reduced*
21 *by the portion of the cost of such property taken*
22 *into account under subsection (a)(1).*

23 “(B) *ORDINARY INCOME RECAPTURE.*—*For*
24 *purposes of section 1245, the amount of the de-*
25 *duction allowable under subsection (a)(1) with*

1 (1) *Section 263(a)(1) (relating to capital ex-*
2 *penditures) is amended by striking “or” at the end of*
3 *subparagraph (G), by striking the period at the end*
4 *of subparagraph (H) and inserting “, or”, and by*
5 *adding at the end the following new subparagraph:*

6 *“(I) expenditures for which a deduction is*
7 *allowed under section 191.”.*

8 (2) *Section 1016(a) of such Code is amended by*
9 *striking “and” at the end of paragraph (27), by strik-*
10 *ing the period at the end of paragraph (28) and in-*
11 *serting “, and”, and by adding at the end the fol-*
12 *lowing new paragraph:*

13 *“(29) to the extent provided in section*
14 *191(f)(2).”.*

15 (3) *The table of sections for part VI of sub-*
16 *chapter A of chapter 1 of such Code is amended by*
17 *inserting after the item relating to section 190 the fol-*
18 *lowing new item:*

“Sec. 191. Broadband expenditures.”.

19 (d) *DESIGNATION OF CENSUS TRACTS.—*

20 (1) *IN GENERAL.—The Secretary of the Treasury*
21 *shall, not later than 90 days after the date of the en-*
22 *actment of this Act, designate and publish those cen-*
23 *sus tracts meeting the criteria described in para-*
24 *graphs (16), (22), and (23) of section 191(e) of the In-*
25 *ternal Revenue Code of 1986 (as added by this sec-*

1 *tion). In making such designations, the Secretary of*
2 *the Treasury shall consult with such other depart-*
3 *ments and agencies as the Secretary determines ap-*
4 *propriate.*

5 (2) *SATURATED MARKET.—*

6 (A) *IN GENERAL.—For purposes of desig-*
7 *nating and publishing those census tracts meet-*
8 *ing the criteria described in subsection (e)(19) of*
9 *such section 191—*

10 (i) *the Secretary of the Treasury shall*
11 *prescribe not later than 30 days after the*
12 *date of the enactment of this Act the form*
13 *upon which any provider which takes the*
14 *position that it meets such criteria with re-*
15 *spect to any census tract shall submit a list*
16 *of such census tracts (and any other infor-*
17 *mation required by the Secretary) not later*
18 *than 60 days after the date of the publica-*
19 *tion of such form, and*

20 (ii) *the Secretary of the Treasury shall*
21 *publish an aggregate list of such census*
22 *tracts and the applicable providers not later*
23 *than 30 days after the last date such sub-*
24 *missions are allowed under clause (i).*

1 (B) *NO SUBSEQUENT LISTS REQUIRED.*—
2 *The Secretary of the Treasury shall not be re-*
3 *quired to publish any list of census tracts meet-*
4 *ing such criteria subsequent to the list described*
5 *in subparagraph (A)(ii).*

6 (e) *OTHER REGULATORY MATTERS.*—

7 (1) *PROHIBITION.*—*No Federal or State agency*
8 *or instrumentality shall adopt regulations or rate-*
9 *making procedures that would have the effect of elimi-*
10 *nating or reducing any deduction or portion thereof*
11 *allowed under section 191 of the Internal Revenue*
12 *Code of 1986 (as added by this section) or otherwise*
13 *subverting the purpose of this section.*

14 (2) *TREASURY REGULATORY AUTHORITY.*—*It is*
15 *the intent of Congress in providing the election to de-*
16 *duct qualified broadband expenditures under section*
17 *191 of the Internal Revenue Code of 1986 (as added*
18 *by this section) to provide incentives for the purchase,*
19 *installation, and connection of equipment and facili-*
20 *ties offering expanded broadband access to the Inter-*
21 *net for users in certain low income and rural areas*
22 *of the United States, as well as to residential users*
23 *nationwide, in a manner that maintains competitive*
24 *neutrality among the various classes of providers of*
25 *broadband services. Accordingly, the Secretary of the*

1 *Treasury shall prescribe such regulations as may be*
2 *necessary or appropriate to carry out the purposes of*
3 *section 191 of such Code, including—*

4 *(A) regulations to determine how and when*
5 *a taxpayer that incurs qualified broadband ex-*
6 *penditures satisfies the requirements of section*
7 *191 of such Code to provide broadband services,*
8 *and*

9 *(B) regulations describing the information,*
10 *records, and data taxpayers are required to pro-*
11 *vide the Secretary to substantiate compliance*
12 *with the requirements of section 191 of such*
13 *Code.*

14 *(f) EFFECTIVE DATE.—The amendments made by this*
15 *section shall apply to expenditures incurred after December*
16 *31, 2003.*

17 **SEC. 303. EXEMPTION OF NATURAL AGING PROCESS IN DE-**
18 **TERMINATION OF PRODUCTION PERIOD FOR**
19 **DISTILLED SPIRITS UNDER SECTION 263A.**

20 *(a) IN GENERAL.—Section 263A(f) of the Internal*
21 *Revenue Code of 1986 (relating to general exceptions) is*
22 *amended by adding at the end the following new paragraph:*

23 *“(5) EXEMPTION OF NATURAL AGING PROCESS IN*
24 *DETERMINATION OF PRODUCTION PERIOD FOR DIS-*
25 *TILLED SPIRITS.—For purposes of this subsection, the*

1 *production period for distilled spirits shall be deter-*
2 *mined without regard to any period allocated to the*
3 *natural aging process.”.*

4 ***(b) EFFECTIVE DATE.***—*The amendment made by this*
5 *section shall apply to production periods beginning after*
6 *the date of the enactment of this Act.*

7 ***SEC. 304. MODIFICATION OF ACTIVE BUSINESS DEFINITION***
8 ***UNDER SECTION 355.***

9 ***(a) IN GENERAL.***—*Section 355(b) (defining active con-*
10 *duct of a trade or business) is amended by adding at the*
11 *end the following new paragraph:*

12 ***“(3) SPECIAL RULES RELATING TO ACTIVE BUSI-***
13 ***NESS REQUIREMENT.***—

14 ***“(A) IN GENERAL.***—*For purposes of deter-*
15 *mining whether a corporation meets the require-*
16 *ment of paragraph (2)(A), all members of such*
17 *corporation’s separate affiliated group shall be*
18 *treated as one corporation. For purposes of the*
19 *preceding sentence, a corporation’s separate af-*
20 *filiated group is the affiliated group which would*
21 *be determined under section 1504(a) if such cor-*
22 *poration were the common parent and section*
23 *1504(b) did not apply.*

24 ***“(B) CONTROL.***—*For purposes of para-*
25 *graph (2)(D), all distributee corporations which*

1 *are members of the same affiliated group (as de-*
2 *defined in section 1504(a) without regard to sec-*
3 *tion 1504(b)) shall be treated as one distributee*
4 *corporation.”.*

5 **(b) CONFORMING AMENDMENTS.—**

6 (1) *Subparagraph (A) of section 355(b)(2) is*
7 *amended to read as follows:*

8 *“(A) it is engaged in the active conduct of*
9 *a trade or business,”.*

10 (2) *Section 355(b)(2) is amended by striking the*
11 *last sentence.*

12 **(c) EFFECTIVE DATE.—**

13 (1) *IN GENERAL.—The amendments made by*
14 *this section shall apply—*

15 *(A) to distributions after the date of the en-*
16 *actment of this Act, and*

17 *(B) for purposes of determining the contin-*
18 *ued qualification under section 355(b)(2)(A) of*
19 *the Internal Revenue Code of 1986 (as amended*
20 *by subsection (b)(1)) of distributions made before*
21 *such date, as a result of an acquisition, disposi-*
22 *tion, or other restructuring after such date.*

23 (2) *TRANSITION RULE.—The amendments made*
24 *by this section shall not apply to any distribution*
25 *pursuant to a transaction which is—*

1 (A) made pursuant to an agreement which
2 was binding on such date of enactment and at
3 all times thereafter,

4 (B) described in a ruling request submitted
5 to the Internal Revenue Service on or before such
6 date, or

7 (C) described on or before such date in a
8 public announcement or in a filing with the Se-
9 curities and Exchange Commission.

10 (3) *ELECTION TO HAVE AMENDMENTS APPLY.*—
11 Paragraph (2) shall not apply if the distributing cor-
12 poration elects not to have such paragraph apply to
13 distributions of such corporation. Any such election,
14 once made, shall be irrevocable.

15 **SEC. 305. EXCLUSION OF CERTAIN INDEBTEDNESS OF**
16 **SMALL BUSINESS INVESTMENT COMPANIES**
17 **FROM ACQUISITION INDEBTEDNESS.**

18 (a) *IN GENERAL.*—Section 514(c) (relating to acquisi-
19 tion indebtedness) is amended by adding at the end the fol-
20 lowing new paragraph:

21 “(10) *CERTAIN INDEBTEDNESS OF SMALL BUSI-*
22 *NESS INVESTMENT COMPANIES.*—For purposes of this
23 section, the term ‘acquisition indebtedness’ does not
24 include any indebtedness incurred by a small business
25 investment company licensed under the Small Busi-

1 *ness Investment Act of 1958 which is evidenced by a*
2 *debenture—*

3 *“(A) issued by such company under section*
4 *303(a) of such Act, and*

5 *“(B) held or guaranteed by the Small Busi-*
6 *ness Administration.”.*

7 *(b) EFFECTIVE DATE.—The amendment made by this*
8 *section shall apply to any indebtedness incurred after De-*
9 *cember 31, 2003, by a small business investment company*
10 *described in section 514(c)(10) of the Internal Revenue Code*
11 *of 1986 (as added by this section) with respect to property*
12 *acquired by such company after such date.*

13 **SEC. 306. MODIFIED TAXATION OF IMPORTED ARCHERY**
14 **PRODUCTS.**

15 *(a) BOWS.—Paragraph (1) of section 4161(b) (relating*
16 *to bows) is amended to read as follows:*

17 *“(1) BOWS.—*

18 *“(A) IN GENERAL.—There is hereby im-*
19 *posed on the sale by the manufacturer, producer,*
20 *or importer of any bow which has a peak draw*
21 *weight of 30 pounds or more, a tax equal to 11*
22 *percent of the price for which so sold.*

23 *“(B) ARCHERY EQUIPMENT.—There is here-*
24 *by imposed on the sale by the manufacturer, pro-*
25 *ducer, or importer—*

1 “(i) of any part or accessory suitable
2 for inclusion in or attachment to a bow de-
3 scribed in subparagraph (A), and

4 “(ii) of any quiver or broadhead suit-
5 able for use with an arrow described in
6 paragraph (2),

7 a tax equal to 11 percent of the price for which
8 so sold.”.

9 (b) *ARROWS.*—Subsection (b) of section 4161 (relating
10 to bows and arrows, etc.) is amended by redesignating para-
11 graph (3) as paragraph (4) and inserting after paragraph
12 (2) the following:

13 “(3) *ARROWS.*—

14 “(A) *IN GENERAL.*—There is hereby im-
15 posed on the sale by the manufacturer, producer,
16 or importer of any arrow, a tax equal to 12 per-
17 cent of the price for which so sold.

18 “(B) *EXCEPTION.*—In the case of any arrow
19 of which the shaft or any other component has
20 been previously taxed under paragraph (1) or
21 (2)—

22 “(i) section 6416(b)(3) shall not apply,
23 and

1 “(ii) the tax imposed by subparagraph
2 (A) shall be an amount equal to the excess
3 (if any) of—

4 “(I) the amount of tax imposed by
5 this paragraph (determined without re-
6 gard to this subparagraph), over

7 “(II) the amount of tax paid with
8 respect to the tax imposed under para-
9 graph (1) or (2) on such shaft or com-
10 ponent.

11 “(C) *ARROW*.—For purposes of this para-
12 graph, the term ‘arrow’ means any shaft de-
13 scribed in paragraph (2) to which additional
14 components are attached.”.

15 (c) *CONFORMING AMENDMENTS*.—Section 4161(b)(2)
16 is amended—

17 (1) by inserting “(other than broadheads)” after
18 “point”, and

19 (2) by striking “*ARROWS*.—” in the heading and
20 inserting “*ARROW COMPONENTS*.—”.

21 (d) *EFFECTIVE DATE*.—The amendments made by this
22 section shall apply to articles sold by the manufacturer,
23 producer, or importer after December 31, 2003.

1 **SEC. 307. MODIFICATION TO COOPERATIVE MARKETING**
2 **RULES TO INCLUDE VALUE ADDED PROC-**
3 **ESSING INVOLVING ANIMALS.**

4 (a) *IN GENERAL.*—Section 1388 (relating to defini-
5 tions and special rules) is amended by adding at the end
6 the following new subsection:

7 “(k) *COOPERATIVE MARKETING INCLUDES VALUE-*
8 *ADDED PROCESSING INVOLVING ANIMALS.*—For purposes
9 of section 521 and this subchapter, the marketing of the
10 products of members or other producers shall include the
11 feeding of such products to cattle, hogs, fish, chickens, or
12 other animals and the sale of the resulting animals or ani-
13 mal products.”.

14 (b) *CONFORMING AMENDMENT.*—Section 521(b) is
15 amended by adding at the end the following new paragraph:

16 “(7) *CROSS REFERENCE.*—

**“For treatment of value-added processing involv-
ing animals, see section 1388(k).”.**

17 (c) *EFFECTIVE DATE.*—The amendments made by this
18 section shall apply to taxable years beginning after the date
19 of the enactment of this Act.

20 **SEC. 308. EXTENSION OF DECLARATORY JUDGMENT PROC-**
21 **DURES TO FARMERS’ COOPERATIVE ORGANI-**
22 **ZATIONS.**

23 (a) *IN GENERAL.*—Section 7428(a)(1) (relating to de-
24 claratory judgments of tax exempt organizations) is amend-

1 *ed by striking “or” at the end of subparagraph (B) and*
2 *by adding at the end the following new subparagraph:*

3 *“(D) with respect to the initial classifica-*
4 *tion or continuing classification of a cooperative*
5 *as an organization described in section 521(b)*
6 *which is exempt from tax under section 521(a),*
7 *or”.*

8 *(b) EFFECTIVE DATE.—The amendments made by this*
9 *section shall apply with respect to pleadings filed after the*
10 *date of the enactment of this Act.*

11 **SEC. 309. TEMPORARY SUSPENSION OF PERSONAL HOLD-**
12 **ING COMPANY TAX.**

13 *(a) IN GENERAL.—Section 541 (relating to imposition*
14 *of personal holding company tax) is amended by adding*
15 *at the end the following new sentence: “The preceding sen-*
16 *tence shall not apply with respect to any taxable year to*
17 *which section 1(h)(11) (as in effect on the date of the enact-*
18 *ment of this sentence) applies.”.*

19 *(b) EFFECTIVE DATE.—The amendment made by this*
20 *section shall apply to taxable years beginning after Decem-*
21 *ber 31, 2003.*

22 **SEC. 310. INCREASE IN SECTION 179 EXPENSING.**

23 *(a) IN GENERAL.—Section 179(b)(2) (relating to re-*
24 *duction in limitation) is amended by inserting “50 percent*
25 *of” before “the amount”.*

1 (b) *EFFECTIVE DATE.*—*The amendment made by this*
2 *section shall apply to taxable years beginning after Decem-*
3 *ber 31, 2002.*

4 **SEC. 311. THREE-YEAR CARRYBACK OF NET OPERATING**
5 **LOSSES.**

6 (a) *IN GENERAL.*—*Paragraph (1) of section 172(b)*
7 *(relating to years to which loss may be carried) is amended*
8 *by adding at the end the following new subparagraph:*

9 “(I) *SPECIAL RULE FOR 2003.*—*In the case*
10 *of a net operating loss for any taxable year end-*
11 *ing during 2003, subparagraph (A)(i) shall be*
12 *applied by substituting ‘3’ for ‘2’.*”

13 (b) *ELECTION TO DISREGARD 3-YEAR CARRYBACK.*—
14 *Section 172 (relating to net operating loss deduction) is*
15 *amended by redesignating subsection (k) as subsection (l)*
16 *and by inserting after subsection (j) the following new sub-*
17 *section:*

18 “(k) *ELECTION TO DISREGARD 3-YEAR CARRYBACK*
19 *FOR CERTAIN NET OPERATING LOSSES.*—*Any taxpayer en-*
20 *titled to a 3-year carryback under subsection (b)(1)(I) from*
21 *any loss year may elect to have the carryback period with*
22 *respect to such loss year determined without regard to sub-*
23 *section (b)(1)(I). Such election shall be made in such man-*
24 *ner as may be prescribed by the Secretary and shall be*
25 *made by the due date (including extensions of time) for fil-*

1 *ing the taxpayer's return for the taxable year of the net*
2 *operating loss. Such election, once made for any taxable*
3 *year, shall be irrevocable for such taxable year.”.*

4 *(c) TEMPORARY SUSPENSION OF 90 PERCENT LIMIT*
5 *ON CERTAIN NOL CARRYOVERS.—*

6 *(1) IN GENERAL.—Section 56(d)(1)(A)(ii)(I) (re-*
7 *lating to general rule defining alternative tax net op-*
8 *erating loss deduction) is amended—*

9 *(A) by striking “or 2002” and inserting “,*
10 *2002, or 2003”, and*

11 *(B) by striking “and 2002” and inserting*
12 *“, 2002, and 2003”.*

13 *(d) TECHNICAL CORRECTIONS.—*

14 *(1) Subparagraph (H) of section 172(b)(1) is*
15 *amended by striking “a taxpayer which has”.*

16 *(2) Section 102(c)(2) of the Job Creation and*
17 *Worker Assistance Act of 2002 (Public Law 107–147)*
18 *is amended by striking “before January 1, 2003” and*
19 *inserting “after December 31, 1990”.*

20 *(3)(A) Subclause (I) of section 56(d)(1)(A)(i) is*
21 *amended by striking “attributable to carryovers”.*

22 *(B) Subclause (I) of section 56(d)(1)(A)(ii) is*
23 *amended—*

24 *(i) by striking “for taxable years” and in-*
25 *serting “from taxable years”, and*

1 (ii) by striking “carryforwards” and insert-
2 ing “carryovers”.

3 (e) *EFFECTIVE DATES.*—

4 (1) *IN GENERAL.*—*Except as provided in para-*
5 *graph (2), the amendments made by this section shall*
6 *apply to net operating losses for taxable years ending*
7 *after December 31, 2002.*

8 (2) *TECHNICAL CORRECTIONS.*—*The amend-*
9 *ments made by subsection (d) shall take effect as if*
10 *included in the amendments made by section 102 of*
11 *the Job Creation and Worker Assistance Act of 2002.*

12 (3) *ELECTION.*—*In the case of a net operating*
13 *loss for a taxable year ending during 2003—*

14 (A) *any election made under section*
15 *172(b)(3) of such Code may (notwithstanding*
16 *such section) be revoked before April 15, 2004,*
17 *and*

18 (B) *any election made under section 172(k)*
19 *(as added by this section) of such Code shall*
20 *(notwithstanding such section) be treated as*
21 *timely made if made before April 15, 2004.*

1 ***Subtitle B—Manufacturing***
2 ***Relating to Films***

3 **SEC. 321. SPECIAL RULES FOR CERTAIN FILM AND TELE-**
4 **VISION PRODUCTIONS.**

5 (a) *IN GENERAL.*—Part VI of subchapter B of chapter
6 1 is amended by inserting after section 180 the following
7 new section:

8 **“SEC. 181. TREATMENT OF QUALIFIED FILM AND TELE-**
9 **VISION PRODUCTIONS.**

10 “(a) *ELECTION TO TREAT CERTAIN COSTS OF QUALI-*
11 *FIED FILM AND TELEVISION PRODUCTIONS AS EX-*
12 *PENSES.*—

13 “(1) *IN GENERAL.*—A taxpayer may elect to
14 *treat the cost of any qualified film or television pro-*
15 *duction as an expense which is not chargeable to cap-*
16 *ital account. Any cost so treated shall be allowed as*
17 *a deduction.*

18 “(2) *DOLLAR LIMITATION.*—

19 “(A) *IN GENERAL.*—The aggregate cost
20 *which may be taken into account under para-*
21 *graph (1) with respect to each qualified film or*
22 *television production shall not exceed*
23 *\$15,000,000.*

24 “(B) *HIGHER DOLLAR LIMITATION FOR*
25 *PRODUCTIONS IN CERTAIN AREAS.*—In the case

1 *of any qualified film or television production the*
2 *aggregate cost of which is significantly incurred*
3 *in an area eligible for designation as—*

4 *“(i) a low-income community under*
5 *section 45D, or*

6 *“(ii) a distressed county or isolated*
7 *area of distress by the Delta Regional Au-*
8 *thority established under section 2009aa-1*
9 *of title 7, United States Code,*

10 *subparagraph (A) shall be applied by sub-*
11 *stituting ‘\$20,000,000’ for ‘\$15,000,000’.*

12 *“(b) AMORTIZATION OF REMAINING COSTS.—*

13 *“(1) IN GENERAL.—If an election is made under*
14 *subsection (a) with respect to any qualified film or*
15 *television production, that portion of the basis of such*
16 *production in excess of the amount taken into account*
17 *under subsection (a) shall be allowed as a deduction*
18 *ratably over the 36-month period beginning with the*
19 *month in which such production is placed in service.*

20 *“(2) NO OTHER DEDUCTION OR AMORTIZATION*
21 *DEDUCTION ALLOWABLE.—With respect to the basis of*
22 *any qualified film or television production described*
23 *in paragraph (1), no other depreciation or amortiza-*
24 *tion deduction shall be allowable.*

25 *“(c) ELECTION.—*

1 “(1) *IN GENERAL.*—*An election under subsection*
2 *(a) with respect to any qualified film or television*
3 *production shall be made in such manner as pre-*
4 *scribed by the Secretary and by the due date (includ-*
5 *ing extensions) for filing the taxpayer’s return of tax*
6 *under this chapter for the taxable year in which costs*
7 *of the production are first incurred.*

8 “(2) *REVOCATION OF ELECTION.*—*Any election*
9 *made under subsection (a) may not be revoked with-*
10 *out the consent of the Secretary.*

11 “(d) *QUALIFIED FILM OR TELEVISION PRODUCTION.*—
12 *For purposes of this section—*

13 “(1) *IN GENERAL.*—*The term ‘qualified film or*
14 *television production’ means any production described*
15 *in paragraph (2) if 75 percent of the total compensa-*
16 *tion of the production is qualified compensation.*

17 “(2) *PRODUCTION.*—

18 “(A) *IN GENERAL.*—*A production is de-*
19 *scribed in this paragraph if such production is*
20 *property described in section 168(f)(3). For pur-*
21 *poses of a television series, only the first 44 epi-*
22 *sodes of such series may be taken into account.*

23 “(B) *EXCEPTION.*—*A production is not de-*
24 *scribed in this paragraph if records are required*
25 *under section 2257 of title 18, United States*

1 Code, to be maintained with respect to any per-
2 former in such production.

3 “(3) *QUALIFIED COMPENSATION.*—For purposes
4 of paragraph (1)—

5 “(A) *IN GENERAL.*—The term ‘qualified
6 compensation’ means compensation for services
7 performed in the United States by actors, direc-
8 tors, producers, and other relevant production
9 personnel.

10 “(B) *PARTICIPATIONS AND RESIDUALS EX-*
11 *CLUDED.*—The term ‘compensation’ does not in-
12 clude participations and residuals (as defined in
13 section 167(g)(7)(B)).

14 “(e) *APPLICATION OF CERTAIN OTHER RULES.*—For
15 purposes of this section, rules similar to the rules of sub-
16 sections (b)(2) and (c)(4) of section 194 shall apply.

17 “(f) *TERMINATION.*—This section shall not apply to
18 qualified film and television productions commencing after
19 December 31, 2008.”.

20 (b) *CONFORMING AMENDMENT.*—The table of sections
21 for part VI of subchapter B of chapter 1 is amended by
22 inserting after the item relating to section 180 the following
23 new item:

 “Sec. 181. Treatment of qualified film and television productions.”.

24 (c) *EFFECTIVE DATE.*—The amendments made by this
25 section shall apply to qualified film and television produc-

1 *tions (as defined in section 181(d)(1) of the Internal Rev-*
2 *enue Code of 1986, as added by this section) commencing*
3 *after the date of the enactment of this Act.*

4 **SEC. 322. MODIFICATION OF APPLICATION OF INCOME**
5 **FORECAST METHOD OF DEPRECIATION.**

6 *(a) IN GENERAL.—Section 167(g) (relating to depre-*
7 *ciation under income forecast method) is amended by add-*
8 *ing at the end the following new paragraph:*

9 *“(7) TREATMENT OF PARTICIPATIONS AND RE-*
10 *SIDUALS.—*

11 *“(A) IN GENERAL.—For purposes of deter-*
12 *mining the depreciation deduction allowable*
13 *with respect to a property under this subsection,*
14 *the taxpayer may include participations and re-*
15 *siduals with respect to such property in the ad-*
16 *justed basis of such property for the taxable year*
17 *in which the property is placed in service, but*
18 *only to the extent that such participations and*
19 *residuals relate to income estimated (for pur-*
20 *poses of this subsection) to be earned in connec-*
21 *tion with the property before the close of the 10th*
22 *taxable year referred to in paragraph (1)(A).*

23 *“(B) PARTICIPATIONS AND RESIDUALS.—*
24 *For purposes of this paragraph, the term ‘par-*
25 *ticipations and residuals’ means, with respect to*

1 *any property, costs the amount of which by con-*
2 *tract varies with the amount of income earned in*
3 *connection with such property.*

4 “(C) *SPECIAL RULES RELATING TO RE-*
5 *COMPUTATION YEARS.—If the adjusted basis of*
6 *any property is determined under this para-*
7 *graph, paragraph (4) shall be applied by sub-*
8 *stituting ‘for each taxable year in such period’*
9 *for ‘for such period’.*

10 “(D) *OTHER SPECIAL RULES.—*

11 “(i) *PARTICIPATIONS AND RESIDU-*
12 *ALS.—Notwithstanding subparagraph (A),*
13 *the taxpayer may exclude participations*
14 *and residuals from the adjusted basis of*
15 *such property and deduct such participa-*
16 *tions and residuals in the taxable year that*
17 *such participations and residuals are paid.*

18 “(ii) *COORDINATION WITH OTHER*
19 *RULES.—Deductions computed in accord-*
20 *ance with this paragraph shall be allowable*
21 *notwithstanding paragraph (1)(B) or sec-*
22 *tions 263, 263A, 404, 419, or 461(h).*

23 “(E) *AUTHORITY TO MAKE ADJUST-*
24 *MENTS.—The Secretary shall prescribe appro-*
25 *priate adjustments to the basis of property and*

1 “(A) *IN GENERAL.*—*In the case of any*
2 *qualified timber property with respect to which*
3 *the taxpayer has made (in accordance with regu-*
4 *lations prescribed by the Secretary) an election*
5 *under this subsection, the taxpayer shall treat re-*
6 *forestation expenditures which are paid or in-*
7 *curring during the taxable year with respect to*
8 *such property as an expense which is not charge-*
9 *able to capital account. The reforestation expend-*
10 *itures so treated shall be allowed as a deduction.*

11 “(B) *DOLLAR LIMITATION.*—*The aggregate*
12 *amount of reforestation expenditures which may*
13 *be taken into account under subparagraph (A)*
14 *with respect to each qualified timber property for*
15 *any taxable year shall not exceed \$10,000*
16 *(\$5,000 in the case of a separate return by a*
17 *married individual (as defined in section*
18 *7703)).”.*

19 (b) *NET AMORTIZABLE BASIS.*—*Section 194(c)(2) (de-*
20 *fining amortizable basis) is amended by inserting “which*
21 *have not been taken into account under subsection (b)” after*
22 *“expenditures”.*

23 (c) *CONFORMING AMENDMENTS.*—

24 (1) *Section 194(b) is amended by striking para-*
25 *graphs (3) and (4).*

1 (2) *Section 194(b)(2) is amended by striking*
2 *“paragraph (1)” both places it appears and inserting*
3 *“paragraph (1)(B)”.*

4 (3) *Section 194(c) is amended by striking para-*
5 *graph (4) and inserting the following new para-*
6 *graphs:*

7 “(4) *TREATMENT OF TRUSTS AND ESTATES.—*

8 “(A) *IN GENERAL.—Except as provided in*
9 *subparagraph (B), this section shall not apply to*
10 *trusts and estates.*

11 “(B) *AMORTIZATION DEDUCTION ALLOWED*
12 *TO ESTATES.—The benefit of the deduction for*
13 *amortization provided by subsection (a) shall be*
14 *allowed to estates in the same manner as in the*
15 *case of an individual. The allowable deduction*
16 *shall be apportioned between the income bene-*
17 *ficiary and the fiduciary under regulations pre-*
18 *scribed by the Secretary. Any amount so appor-*
19 *tioned to a beneficiary shall be taken into ac-*
20 *count for purposes of determining the amount al-*
21 *lowable as a deduction under subsection (a) to*
22 *such beneficiary.*

23 “(5) *APPLICATION WITH OTHER DEDUCTIONS.—*

24 *No deduction shall be allowed under any other provi-*
25 *sion of this chapter with respect to any expenditure*

1 *with respect to which a deduction is allowed or allow-*
2 *able under this section to the taxpayer .”.*

3 (4) *The heading for section 194 is amended by*
4 *striking “AMORTIZATION” and inserting “TREAT-*
5 *MENT”.*

6 (5) *The item relating to section 194 in the table*
7 *of sections for part VI of subchapter B of chapter 1*
8 *is amended by striking “Amortization” and inserting*
9 *“Treatment”.*

10 (d) *REPEAL OF REFORESTATION CREDIT.—*

11 (1) *IN GENERAL.—Section 46 (relating to*
12 *amount of credit) is amended—*

13 (A) *by adding “and” at the end of para-*
14 *graph (1),*

15 (B) *by striking “, and ” at the end of para-*
16 *graph (2) and inserting a period, and*

17 (C) *by striking paragraph (3).*

18 (2) *CONFORMING AMENDMENTS.—*

19 (A) *Section 48 is amended—*

20 (i) *by striking subsection (b),*

21 (ii) *by striking “this subsection” in*
22 *paragraph (5) of subsection (a) and insert-*
23 *ing “subsection (a)”, and*

24 (iii) *by redesignating such paragraph*
25 *(5) as subsection (b).*

1 **SEC. 333. CAPITAL GAIN TREATMENT UNDER SECTION**
2 **631(b) TO APPLY TO OUTRIGHT SALES BY**
3 **LANDOWNERS.**

4 (a) *IN GENERAL.*—*The first sentence of section 631(b)*
5 *(relating to disposal of timber with a retained economic in-*
6 *terest) is amended by striking “retains an economic interest*
7 *in such timber” and inserting “either retains an economic*
8 *interest in such timber or makes an outright sale of such*
9 *timber”.*

10 (b) *CONFORMING AMENDMENTS.*—

11 (1) *The third sentence of section 631(b) is*
12 *amended by striking “The date of disposal” and in-*
13 *serting “In the case of disposal of timber with a re-*
14 *tained economic interest, the date of disposal”.*

15 (2) *The heading for section 631(b) is amended by*
16 *striking “WITH A RETAINED ECONOMIC INTEREST”.*

17 (c) *EFFECTIVE DATE.*—*The amendments made by this*
18 *section shall apply to sales after the date of the enactment*
19 *of this Act.*

20 **SEC. 334. MODIFICATION OF SAFE HARBOR RULES FOR TIM-**
21 **BER REITS.**

22 (a) *EXPANSION OF PROHIBITED TRANSACTION SAFE*
23 *HARBOR.*—*Section 857(b)(6) (relating to income from pro-*
24 *hibited transactions) is amended by redesignating subpara-*
25 *graphs (D) and (E) as subparagraphs (E) and (F), respec-*

1 *tively, and by inserting after subparagraph (C) the fol-*
2 *lowing new subparagraph:*

3 “(D) *CERTAIN SALES NOT TO CONSTITUTE*
4 *PROHIBITED TRANSACTIONS.—For purposes of*
5 *this part, the term ‘prohibited transaction’ does*
6 *not include a sale of property which is a real es-*
7 *tate asset (as defined in section 856(c)(5)(B))*
8 *if—*

9 “(i) *the trust held the property for not*
10 *less than 4 years in connection with the*
11 *trade or business of producing timber,*

12 “(ii) *the aggregate expenditures made*
13 *by the trust, or a partner of the trust, dur-*
14 *ing the 4-year period preceding the date of*
15 *sale which—*

16 “(I) *are includible in the basis of*
17 *the property (other than timberland*
18 *acquisition expenditures), and*

19 “(II) *are directly related to oper-*
20 *ation of the property for the produc-*
21 *tion of timber or for the preservation of*
22 *the property for use as timberland,*
23 *do not exceed 30 percent of the net selling*
24 *price of the property,*

1 “(iii) the aggregate expenditures made
2 by the trust, or a partner of the trust, dur-
3 ing the 4-year period preceding the date of
4 sale which—

5 “(I) are includible in the basis of
6 the property (other than timberland
7 acquisition expenditures), and

8 “(II) are not directly related to
9 operation of the property for the pro-
10 duction of timber, or for the preserva-
11 tion of the property for use as
12 timberland,

13 do not exceed 5 percent of the net selling
14 price of the property,

15 “(iv)(I) during the taxable year the
16 trust does not make more than 7 sales of
17 property (other than sales of foreclosure
18 property or sales to which section 1033 ap-
19 plies), or

20 “(II) the aggregate adjusted bases (as
21 determined for purposes of computing earn-
22 ings and profits) of property (other than
23 sales of foreclosure property or sales to
24 which section 1033 applies) sold during the
25 taxable year does not exceed 10 percent of

1 *the aggregate bases (as so determined) of all*
2 *of the assets of the trust as of the beginning*
3 *of the taxable year,*

4 *“(v) in the case that the requirement of*
5 *clause (iv)(I) is not satisfied, substantially*
6 *all of the marketing expenditures with re-*
7 *spect to the property were made through an*
8 *independent contractor (as defined in sec-*
9 *tion 856(d)(3)) from whom the trust itself*
10 *does not derive or receive any income, and*

11 *“(vi) the sales price of the property*
12 *sold by the trust is not based in whole or in*
13 *part on income or profits, including income*
14 *or profits derived from the sale or operation*
15 *of such property.”.*

16 ***(b) EFFECTIVE DATE.***—*The amendments made by this*
17 *section shall apply to taxable years beginning after the date*
18 *of the enactment of this Act.*

1 **TITLE IV—ADDITIONAL**
2 **PROVISIONS**
3 **Subtitle A—Provisions Designed To**
4 **Curtail Tax Shelters**

5 **SEC. 401. CLARIFICATION OF ECONOMIC SUBSTANCE DOC-**
6 **TRINE.**

7 (a) *IN GENERAL.*—Section 7701 is amended by redес-
8 ignating subsection (n) as subsection (o) and by inserting
9 after subsection (m) the following new subsection:

10 “(n) *CLARIFICATION OF ECONOMIC SUBSTANCE DOC-*
11 *TRINE; ETC.*—

12 “(1) *GENERAL RULES.*—

13 “(A) *IN GENERAL.*—*In any case in which a*
14 *court determines that the economic substance*
15 *doctrine is relevant for purposes of this title to*
16 *a transaction (or series of transactions), such*
17 *transaction (or series of transactions) shall have*
18 *economic substance only if the requirements of*
19 *this paragraph are met.*

20 “(B) *DEFINITION OF ECONOMIC SUB-*
21 *STANCE.*—*For purposes of subparagraph (A)—*

22 “(i) *IN GENERAL.*—*A transaction has*
23 *economic substance only if—*

24 “(I) *the transaction changes in a*
25 *meaningful way (apart from Federal*

1 *tax effects) the taxpayer's economic po-*
2 *sition, and*

3 *“(II) the taxpayer has a substan-*
4 *tial nontax purpose for entering into*
5 *such transaction and the transaction is*
6 *a reasonable means of accomplishing*
7 *such purpose.*

8 *In applying subclause (II), a purpose of*
9 *achieving a financial accounting benefit*
10 *shall not be taken into account in deter-*
11 *mining whether a transaction has a sub-*
12 *stantial nontax purpose if the origin of such*
13 *financial accounting benefit is a reduction*
14 *of income tax.*

15 *“(ii) SPECIAL RULE WHERE TAXPAYER*
16 *RELIES ON PROFIT POTENTIAL.—A trans-*
17 *action shall not be treated as having eco-*
18 *nomics substance by reason of having a po-*
19 *tential for profit unless—*

20 *“(I) the present value of the rea-*
21 *sonably expected pre-tax profit from*
22 *the transaction is substantial in rela-*
23 *tion to the present value of the expected*
24 *net tax benefits that would be allowed*
25 *if the transaction were respected, and*

1 “(II) *the reasonably expected pre-*
2 *tax profit from the transaction exceeds*
3 *a risk-free rate of return.*

4 “(C) *TREATMENT OF FEES AND FOREIGN*
5 *TAXES.—Fees and other transaction expenses*
6 *and foreign taxes shall be taken into account as*
7 *expenses in determining pre-tax profit under*
8 *subparagraph (B)(i).*

9 “(2) *SPECIAL RULES FOR TRANSACTIONS WITH*
10 *TAX-INDIFFERENT PARTIES.—*

11 “(A) *SPECIAL RULES FOR FINANCING*
12 *TRANSACTIONS.—The form of a transaction*
13 *which is in substance the borrowing of money or*
14 *the acquisition of financial capital directly or*
15 *indirectly from a tax-indifferent party shall not*
16 *be respected if the present value of the deductions*
17 *to be claimed with respect to the transaction is*
18 *substantially in excess of the present value of the*
19 *anticipated economic returns of the person lend-*
20 *ing the money or providing the financial capital.*
21 *A public offering shall be treated as a borrowing,*
22 *or an acquisition of financial capital, from a*
23 *tax-indifferent party if it is reasonably expected*
24 *that at least 50 percent of the offering will be*
25 *placed with tax-indifferent parties.*

1 “(B) *ARTIFICIAL INCOME SHIFTING AND*
2 *BASIS ADJUSTMENTS.*—*The form of a trans-*
3 *action with a tax-indifferent party shall not be*
4 *respected if—*

5 “(i) *it results in an allocation of in-*
6 *come or gain to the tax-indifferent party in*
7 *excess of such party’s economic income or*
8 *gain, or*

9 “(ii) *it results in a basis adjustment or*
10 *shifting of basis on account of overstating*
11 *the income or gain of the tax-indifferent*
12 *party.*

13 “(3) *DEFINITIONS AND SPECIAL RULES.*—*For*
14 *purposes of this subsection—*

15 “(A) *ECONOMIC SUBSTANCE DOCTRINE.*—
16 *The term ‘economic substance doctrine’ means*
17 *the common law doctrine under which tax bene-*
18 *fits under subtitle A with respect to a trans-*
19 *action are not allowable if the transaction does*
20 *not have economic substance or lacks a business*
21 *purpose.*

22 “(B) *TAX-INDIFFERENT PARTY.*—*The term*
23 *‘tax-indifferent party’ means any person or enti-*
24 *ty not subject to tax imposed by subtitle A. A*
25 *person shall be treated as a tax-indifferent party*

1 *with respect to a transaction if the items taken*
2 *into account with respect to the transaction have*
3 *no substantial impact on such person's liability*
4 *under subtitle A.*

5 “(C) *EXCEPTION FOR PERSONAL TRANS-*
6 *ACTIONS OF INDIVIDUALS.—In the case of an in-*
7 *dividual, this subsection shall apply only to*
8 *transactions entered into in connection with a*
9 *trade or business or an activity engaged in for*
10 *the production of income.*

11 “(D) *TREATMENT OF LESSORS.—In apply-*
12 *ing paragraph (1)(B)(ii) to the lessor of tangible*
13 *property subject to a lease—*

14 “(i) *the expected net tax benefits with*
15 *respect to the leased property shall not in-*
16 *clude the benefits of—*

17 “(I) *depreciation,*

18 “(II) *any tax credit, or*

19 “(III) *any other deduction as pro-*
20 *vided in guidance by the Secretary,*
21 *and*

22 “(ii) *subclause (II) of paragraph*
23 *(1)(B)(ii) shall be disregarded in deter-*
24 *mining whether any of such benefits are al-*
25 *lowable.*

1 *respect to a reportable transaction which is required under*
2 *section 6011 to be included with such return or statement*
3 *shall pay a penalty in the amount determined under sub-*
4 *section (b).*

5 “(b) *AMOUNT OF PENALTY.—*

6 “(1) *IN GENERAL.—Except as provided in para-*
7 *graphs (2) and (3), the amount of the penalty under*
8 *subsection (a) shall be \$50,000.*

9 “(2) *LISTED TRANSACTION.—The amount of the*
10 *penalty under subsection (a) with respect to a listed*
11 *transaction shall be \$100,000.*

12 “(3) *INCREASE IN PENALTY FOR LARGE ENTITIES*
13 *AND HIGH NET WORTH INDIVIDUALS.—*

14 “(A) *IN GENERAL.—In the case of a failure*
15 *under subsection (a) by—*

16 “(i) *a large entity, or*

17 “(ii) *a high net worth individual,*

18 *the penalty under paragraph (1) or (2) shall be*
19 *twice the amount determined without regard to*
20 *this paragraph.*

21 “(B) *LARGE ENTITY.—For purposes of sub-*
22 *paragraph (A), the term ‘large entity’ means,*
23 *with respect to any taxable year, a person (other*
24 *than a natural person) with gross receipts in ex-*
25 *cess of \$10,000,000 for the taxable year in which*

1 *the reportable transaction occurs or the pre-*
2 *ceding taxable year. Rules similar to the rules of*
3 *paragraph (2) and subparagraphs (B), (C), and*
4 *(D) of paragraph (3) of section 448(c) shall*
5 *apply for purposes of this subparagraph.*

6 “(C) *HIGH NET WORTH INDIVIDUAL.*—*For*
7 *purposes of subparagraph (A), the term ‘high net*
8 *worth individual’ means, with respect to a re-*
9 *portable transaction, a natural person whose net*
10 *worth exceeds \$2,000,000 immediately before the*
11 *transaction.*

12 “(c) *DEFINITIONS.*—*For purposes of this section—*

13 “(1) *REPORTABLE TRANSACTION.*—*The term ‘re-*
14 *portable transaction’ means any transaction with re-*
15 *spect to which information is required to be included*
16 *with a return or statement because, as determined*
17 *under regulations prescribed under section 6011, such*
18 *transaction is of a type which the Secretary deter-*
19 *mines as having a potential for tax avoidance or eva-*
20 *sion.*

21 “(2) *LISTED TRANSACTION.*—*Except as provided*
22 *in regulations, the term ‘listed transaction’ means a*
23 *reportable transaction which is the same as, or sub-*
24 *stantially similar to, a transaction specifically identi-*

1 *fied by the Secretary as a tax avoidance transaction*
2 *for purposes of section 6011.*

3 “(d) *AUTHORITY TO RESCIND PENALTY.*—

4 “(1) *IN GENERAL.*—*The Commissioner of Internal*
5 *Revenue may rescind all or any portion of any*
6 *penalty imposed by this section with respect to any*
7 *violation if—*

8 “(A) *the violation is with respect to a re-*
9 *portable transaction other than a listed trans-*
10 *action,*

11 “(B) *the person on whom the penalty is im-*
12 *posed has a history of complying with the re-*
13 *quirements of this title,*

14 “(C) *it is shown that the violation is due to*
15 *an unintentional mistake of fact;*

16 “(D) *imposing the penalty would be against*
17 *equity and good conscience, and*

18 “(E) *rescinding the penalty would promote*
19 *compliance with the requirements of this title*
20 *and effective tax administration.*

21 “(2) *DISCRETION.*—*The exercise of authority*
22 *under paragraph (1) shall be at the sole discretion of*
23 *the Commissioner and may be delegated only to the*
24 *head of the Office of Tax Shelter Analysis. The Com-*
25 *missioner, in the Commissioner’s sole discretion, may*

1 “(B) a description of each penalty rescinded
2 under this subsection and the reasons therefor.

3 “(e) *PENALTY REPORTED TO SEC.*—In the case of a
4 person—

5 “(1) which is required to file periodic reports
6 under section 13 or 15(d) of the Securities Exchange
7 Act of 1934 or is required to be consolidated with an-
8 other person for purposes of such reports, and

9 “(2) which—

10 “(A) is required to pay a penalty under
11 this section with respect to a listed transaction,

12 “(B) is required to pay a penalty under sec-
13 tion 6662A with respect to any reportable trans-
14 action at a rate prescribed under section
15 6662A(c), or

16 “(C) is required to pay a penalty under sec-
17 tion 6662B with respect to any noneconomic
18 substance transaction,

19 the requirement to pay such penalty shall be disclosed in
20 such reports filed by such person for such periods as the
21 Secretary shall specify. Failure to make a disclosure in ac-
22 cordance with the preceding sentence shall be treated as a
23 failure to which the penalty under subsection (b)(2) applies.

1 “(f) *COORDINATION WITH OTHER PENALTIES.*—The
2 *penalty imposed by this section is in addition to any pen-*
3 *alty imposed under this title.*”.

4 (b) *CONFORMING AMENDMENT.*—The table of sections
5 *for part I of subchapter B of chapter 68 is amended by*
6 *inserting after the item relating to section 6707 the fol-*
7 *lowing:*

“Sec. 6707A. *Penalty for failure to include reportable transaction
information with return or statement.*”.

8 (c) *EFFECTIVE DATE.*—The amendments made by this
9 *section shall apply to returns and statements the due date*
10 *for which is after the date of the enactment of this Act.*

11 **SEC. 403. ACCURACY-RELATED PENALTY FOR LISTED**
12 **TRANSACTIONS AND OTHER REPORTABLE**
13 **TRANSACTIONS HAVING A SIGNIFICANT TAX**
14 **AVOIDANCE PURPOSE.**

15 (a) *IN GENERAL.*—Subchapter A of chapter 68 is
16 *amended by inserting after section 6662 the following new*
17 *section:*

18 **“SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PENALTY**
19 **ON UNDERSTATEMENTS WITH RESPECT TO**
20 **REPORTABLE TRANSACTIONS.**

21 “(a) *IMPOSITION OF PENALTY.*—If a taxpayer has a
22 *reportable transaction understatement for any taxable year,*
23 *there shall be added to the tax an amount equal to 20 per-*
24 *cent of the amount of such understatement.*

1 “(b) *REPORTABLE TRANSACTION UNDERSTATE-*
2 *MENT.—For purposes of this section—*

3 “(1) *IN GENERAL.—The term ‘reportable trans-*
4 *action understatement’ means the sum of—*

5 “(A) *the product of—*

6 “(i) *the amount of the increase (if any)*
7 *in taxable income which results from a dif-*
8 *ference between the proper tax treatment of*
9 *an item to which this section applies and*
10 *the taxpayer’s treatment of such item (as*
11 *shown on the taxpayer’s return of tax), and*

12 “(ii) *the highest rate of tax imposed by*
13 *section 1 (section 11 in the case of a tax-*
14 *payer which is a corporation), and*

15 “(B) *the amount of the decrease (if any) in*
16 *the aggregate amount of credits determined*
17 *under subtitle A which results from a difference*
18 *between the taxpayer’s treatment of an item to*
19 *which this section applies (as shown on the tax-*
20 *payer’s return of tax) and the proper tax treat-*
21 *ment of such item.*

22 *For purposes of subparagraph (A), any reduction of*
23 *the excess of deductions allowed for the taxable year*
24 *over gross income for such year, and any reduction*
25 *in the amount of capital losses which would (without*

1 *regard to section 1211) be allowed for such year, shall*
2 *be treated as an increase in taxable income.*

3 “(2) *ITEMS TO WHICH SECTION APPLIES.—This*
4 *section shall apply to any item which is attributable*
5 *to—*

6 “(A) *any listed transaction, and*

7 “(B) *any reportable transaction (other than*
8 *a listed transaction) if a significant purpose of*
9 *such transaction is the avoidance or evasion of*
10 *Federal income tax.*

11 “(c) *HIGHER PENALTY FOR NONDISCLOSED LISTED*
12 *AND OTHER AVOIDANCE TRANSACTIONS.—*

13 “(1) *IN GENERAL.—Subsection (a) shall be ap-*
14 *plied by substituting ‘30 percent’ for ‘20 percent’ with*
15 *respect to the portion of any reportable transaction*
16 *understatement with respect to which the requirement*
17 *of section 6664(d)(2)(A) is not met.*

18 “(2) *RULES APPLICABLE TO ASSERTION AND*
19 *COMPROMISE OF PENALTY.—*

20 “(A) *IN GENERAL.—Only upon the ap-*
21 *proval by the Chief Counsel for the Internal Rev-*
22 *enue Service or the Chief Counsel’s delegate at*
23 *the national office of the Internal Revenue Serv-*
24 *ice may a penalty to which paragraph (1) ap-*
25 *plies be included in a 1st letter of proposed defi-*

1 *ciency which allows the taxpayer an opportunity*
2 *for administrative review in the Internal Rev-*
3 *enue Service Office of Appeals. If such a letter is*
4 *provided to the taxpayer, only the Commissioner*
5 *of Internal Revenue may compromise all or any*
6 *portion of such penalty.*

7 “(B) *APPLICABLE RULES.*—*The rules of*
8 *paragraphs (2), (3), (4), and (5) of section*
9 *6707A(d) shall apply for purposes of subpara-*
10 *graph (A).*

11 “(d) *DEFINITIONS OF REPORTABLE AND LISTED*
12 *TRANSACTIONS.*—*For purposes of this section, the terms ‘re-*
13 *portable transaction’ and ‘listed transaction’ have the re-*
14 *spective meanings given to such terms by section 6707A(c).*

15 “(e) *SPECIAL RULES.*—

16 “(1) *COORDINATION WITH PENALTIES, ETC., ON*
17 *OTHER UNDERSTATEMENTS.*—*In the case of an under-*
18 *statement (as defined in section 6662(d)(2))—*

19 “(A) *the amount of such understatement*
20 *(determined without regard to this paragraph)*
21 *shall be increased by the aggregate amount of re-*
22 *portable transaction understatements and non-*
23 *economic substance transaction understatements*
24 *for purposes of determining whether such under-*

1 *statement is a substantial understatement under*
2 *section 6662(d)(1), and*

3 *“(B) the addition to tax under section*
4 *6662(a) shall apply only to the excess of the*
5 *amount of the substantial understatement (if*
6 *any) after the application of subparagraph (A)*
7 *over the aggregate amount of reportable trans-*
8 *action understatements and noneconomic sub-*
9 *stance transaction understatements.*

10 *“(2) COORDINATION WITH OTHER PENALTIES.—*

11 *“(A) APPLICATION OF FRAUD PENALTY.—*
12 *References to an underpayment in section 6663*
13 *shall be treated as including references to a re-*
14 *portable transaction understatement and a non-*
15 *economic substance transaction understatement.*

16 *“(B) NO DOUBLE PENALTY.—This section*
17 *shall not apply to any portion of an understate-*
18 *ment on which a penalty is imposed under sec-*
19 *tion 6662B or 6663.*

20 *“(3) SPECIAL RULE FOR AMENDED RETURNS.—*

21 *Except as provided in regulations, in no event shall*
22 *any tax treatment included with an amendment or*
23 *supplement to a return of tax be taken into account*
24 *in determining the amount of any reportable trans-*
25 *action understatement or noneconomic substance*

1 *transaction understatement if the amendment or sup-*
2 *plement is filed after the earlier of the date the tax-*
3 *payer is first contacted by the Secretary regarding the*
4 *examination of the return or such other date as is*
5 *specified by the Secretary.*

6 *“(4) NONECONOMIC SUBSTANCE TRANS-*
7 *ACTION UNDERSTATEMENT.—For purposes of this*
8 *subsection, the term ‘noneconomic substance*
9 *transaction understatement’ has the meaning*
10 *given such term by section 6662B(c).*

11 *“(5) CROSS REFERENCE.—*

“For reporting of section 6662A(c) penalty to the
 Securities and Exchange Commission, see section
 6707A(e).”.

12 *(b) DETERMINATION OF OTHER UNDERSTATE-*
13 *MENTS.—Subparagraph (A) of section 6662(d)(2) is*
14 *amended by adding at the end the following flush sentence:*

15 *“The excess under the preceding sentence shall be*
16 *determined without regard to items to which sec-*
17 *tion 6662A applies and without regard to items*
18 *with respect to which a penalty is imposed by*
19 *section 6662B.”.*

20 *(c) REASONABLE CAUSE EXCEPTION.—*

21 *(1) IN GENERAL.—Section 6664 is amended by*
22 *adding at the end the following new subsection:*

23 *“(d) REASONABLE CAUSE EXCEPTION FOR REPORT-*
24 *ABLE TRANSACTION UNDERSTATEMENTS.—*

1 “(1) *IN GENERAL.*—No penalty shall be imposed
2 under section 6662A with respect to any portion of a
3 reportable transaction understatement if it is shown
4 that there was a reasonable cause for such portion
5 and that the taxpayer acted in good faith with respect
6 to such portion.

7 “(2) *SPECIAL RULES.*—Paragraph (1) shall not
8 apply to any reportable transaction understatement
9 unless—

10 “(A) the relevant facts affecting the tax
11 treatment of the item are adequately disclosed in
12 accordance with the regulations prescribed under
13 section 6011,

14 “(B) there is or was substantial authority
15 for such treatment, and

16 “(C) the taxpayer reasonably believed that
17 such treatment was more likely than not the
18 proper treatment.

19 A taxpayer failing to adequately disclose in accord-
20 ance with section 6011 shall be treated as meeting the
21 requirements of subparagraph (A) if the penalty for
22 such failure was rescinded under section 6707A(d).

23 “(3) *RULES RELATING TO REASONABLE BE-*
24 *LIEF.*—For purposes of paragraph (2)(C)—

1 “(A) *IN GENERAL.*—A taxpayer shall be
2 *treated as having a reasonable belief with respect*
3 *to the tax treatment of an item only if such*
4 *belief—*

5 “(i) *is based on the facts and law that*
6 *exist at the time the return of tax which in-*
7 *cludes such tax treatment is filed, and*

8 “(ii) *relates solely to the taxpayer’s*
9 *chances of success on the merits of such*
10 *treatment and does not take into account*
11 *the possibility that a return will not be au-*
12 *dated, such treatment will not be raised on*
13 *audit, or such treatment will be resolved*
14 *through settlement if it is raised.*

15 “(B) *CERTAIN OPINIONS MAY NOT BE RE-*
16 *LIED UPON.*—

17 “(i) *IN GENERAL.*—An opinion of a
18 *tax advisor may not be relied upon to estab-*
19 *lish the reasonable belief of a taxpayer if—*

20 “(I) *the tax advisor is described*
21 *in clause (ii), or*

22 “(II) *the opinion is described in*
23 *clause (iii).*

1 “(ii) *DISQUALIFIED TAX ADVISORS*.—A
2 *tax advisor is described in this clause if the*
3 *tax advisor—*

4 “(I) *is a material advisor (within*
5 *the meaning of section 6111(b)(1)) who*
6 *participates in the organization, man-*
7 *agement, promotion, or sale of the*
8 *transaction or who is related (within*
9 *the meaning of section 267(b) or*
10 *707(b)(1)) to any person who so par-*
11 *ticipates,*

12 “(II) *is compensated directly or*
13 *indirectly by a material advisor with*
14 *respect to the transaction,*

15 “(III) *has a fee arrangement with*
16 *respect to the transaction which is con-*
17 *tingent on all or part of the intended*
18 *tax benefits from the transaction being*
19 *sustained, or*

20 “(IV) *as determined under regula-*
21 *tions prescribed by the Secretary, has a*
22 *disqualifying financial interest with*
23 *respect to the transaction.*

1 “(iii) *DISQUALIFIED OPINIONS.*—*For*
2 *purposes of clause (i), an opinion is dis-*
3 *qualified if the opinion—*

4 *“(I) is based on unreasonable fac-*
5 *tual or legal assumptions (including*
6 *assumptions as to future events),*

7 *“(II) unreasonably relies on rep-*
8 *resentations, statements, findings, or*
9 *agreements of the taxpayer or any*
10 *other person,*

11 *“(III) does not identify and con-*
12 *sider all relevant facts, or*

13 *“(IV) fails to meet any other re-*
14 *quirement as the Secretary may pre-*
15 *scribe.”.*

16 (2) *CONFORMING AMENDMENT.*—*The heading for*
17 *subsection (c) of section 6664 is amended by inserting*
18 *“FOR UNDERPAYMENTS” after “EXCEPTION”.*

19 (d) *CONFORMING AMENDMENTS.*—

20 (1) *Subparagraph (C) of section 461(i)(3) is*
21 *amended by striking “section 6662(d)(2)(C)(iii)” and*
22 *inserting “section 1274(b)(3)(C)”.*

23 (2) *Paragraph (3) of section 1274(b) is*
24 *amended—*

1 (A) by striking “(as defined in section
2 6662(d)(2)(C)(iii))” in subparagraph (B)(i), and

3 (B) by adding at the end the following new
4 subparagraph:

5 “(C) *TAX SHELTER*.—For purposes of sub-
6 paragraph (B), the term ‘tax shelter’ means—

7 “(i) a partnership or other entity,

8 “(ii) any investment plan or arrange-
9 ment, or

10 “(iii) any other plan or arrangement,
11 if a significant purpose of such partnership, en-
12 tity, plan, or arrangement is the avoidance or
13 evasion of Federal income tax.”.

14 (3) Section 6662(d)(2) is amended by striking
15 subparagraphs (C) and (D).

16 (4) Section 6664(c)(1) is amended by striking
17 “this part” and inserting “section 6662 or 6663”.

18 (5) Subsection (b) of section 7525 is amended by
19 striking “section 6662(d)(2)(C)(iii)” and inserting
20 “section 1274(b)(3)(C)”.

21 (6)(A) The heading for section 6662 is amended
22 to read as follows:

1 **“SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY**
2 **ON UNDERPAYMENTS.”.**

3 *(B) The table of sections for part II of sub-*
4 *chapter A of chapter 68 is amended by striking the*
5 *item relating to section 6662 and inserting the fol-*
6 *lowing new items:*

“Sec. 6662. Imposition of accuracy-related penalty on underpay-
ments.

“Sec. 6662A. Imposition of accuracy-related penalty on understatements with respect to reportable transactions.”.

7 *(e) EFFECTIVE DATE.—The amendments made by this*
8 *section shall apply to taxable years ending after the date*
9 *of the enactment of this Act.*

10 **SEC. 404. PENALTY FOR UNDERSTATEMENTS ATTRIB-**
11 **UTABLE TO TRANSACTIONS LACKING ECO-**
12 **NOMIC SUBSTANCE, ETC.**

13 *(a) IN GENERAL.—Subchapter A of chapter 68 is*
14 *amended by inserting after section 6662A the following new*
15 *section:*

16 **“SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIB-**
17 **UTABLE TO TRANSACTIONS LACKING ECO-**
18 **NOMIC SUBSTANCE, ETC.**

19 *“(a) IMPOSITION OF PENALTY.—If a taxpayer has an*
20 *noneconomic substance transaction understatement for any*
21 *taxable year, there shall be added to the tax an amount*
22 *equal to 40 percent of the amount of such understatement.*

1 “(b) *REDUCTION OF PENALTY FOR DISCLOSED TRANS-*
2 *ACTIONS.*—*Subsection (a) shall be applied by substituting*
3 *‘20 percent’ for ‘40 percent’ with respect to the portion of*
4 *any noneconomic substance transaction understatement*
5 *with respect to which the relevant facts affecting the tax*
6 *treatment of the item are adequately disclosed in the return*
7 *or a statement attached to the return.*

8 “(c) *NONECONOMIC SUBSTANCE TRANSACTION UNDER-*
9 *STATEMENT.*—*For purposes of this section—*

10 “(1) *IN GENERAL.*—*The term ‘noneconomic sub-*
11 *stance transaction understatement’ means any*
12 *amount which would be an understatement under sec-*
13 *tion 6662A(b)(1) if section 6662A were applied by*
14 *taking into account items attributable to noneconomic*
15 *substance transactions rather than items to which sec-*
16 *tion 6662A would apply without regard to this para-*
17 *graph.*

18 “(2) *NONECONOMIC SUBSTANCE TRANSACTION.*—
19 *The term ‘noneconomic substance transaction’ means*
20 *any transaction if—*

21 “(A) *there is a lack of economic substance*
22 *(within the meaning of section 7701(n)(1)) for*
23 *the transaction giving rise to the claimed benefit*
24 *or the transaction was not respected under sec-*
25 *tion 7701(n)(2), or*

1 “(B) *the transaction fails to meet the re-*
2 *quirements of any similar rule of law.*

3 “(d) *RULES APPLICABLE TO COMPROMISE OF PEN-*
4 *ALTY.—*

5 “(1) *IN GENERAL.—If the 1st letter of proposed*
6 *deficiency which allows the taxpayer an opportunity*
7 *for administrative review in the Internal Revenue*
8 *Service Office of Appeals has been sent with respect*
9 *to a penalty to which this section applies, only the*
10 *Commissioner of Internal Revenue may compromise*
11 *all or any portion of such penalty.*

12 “(2) *APPLICABLE RULES.—The rules of para-*
13 *graphs (2), (3), (4), and (5) of section 6707A(d) shall*
14 *apply for purposes of paragraph (1).*

15 “(e) *COORDINATION WITH OTHER PENALTIES.—Ex-*
16 *cept as otherwise provided in this part, the penalty imposed*
17 *by this section shall be in addition to any other penalty*
18 *imposed by this title.*

19 “(f) *CROSS REFERENCES.—*

 “(1) ***For coordination of penalty with understatement-
under section 6662 and other special rules, see
section 6662A(e).***

 “(2) ***For reporting of penalty imposed under this
section to the Securities and Exchange Commission,
see section 6707A(e).***”.

20 “(b) *CLERICAL AMENDMENT.—The table of sections for*
21 *part II of subchapter A of chapter 68 is amended by insert-*

1 *ing after the item relating to section 6662A the following*
2 *new item:*

*“Sec. 6662B. Penalty for understatements attributable to trans-
actions lacking economic substance, etc.”.*

3 *(c) EFFECTIVE DATE.—The amendments made by this*
4 *section shall apply to transactions entered into after the*
5 *date of the enactment of this Act.*

6 **SEC. 405. MODIFICATIONS OF SUBSTANTIAL UNDERSTATE-**
7 **MENT PENALTY FOR NONREPORTABLE**
8 **TRANSACTIONS.**

9 *(a) SUBSTANTIAL UNDERSTATEMENT OF CORPORA-*
10 *TIONS.—Section 6662(d)(1)(B) (relating to special rule for*
11 *corporations) is amended to read as follows:*

12 *“(B) SPECIAL RULE FOR CORPORATIONS.—*
13 *In the case of a corporation other than an S cor-*
14 *poration or a personal holding company (as de-*
15 *finied in section 542), there is a substantial un-*
16 *derstatement of income tax for any taxable year*
17 *if the amount of the understatement for the tax-*
18 *able year exceeds the lesser of—*

19 *“(i) 10 percent of the tax required to*
20 *be shown on the return for the taxable year*
21 *(or, if greater, \$10,000), or*

22 *“(ii) \$10,000,000.”.*

23 *(b) REDUCTION FOR UNDERSTATEMENT OF TAXPAYER*
24 *DUE TO POSITION OF TAXPAYER OR DISCLOSED ITEM.—*

1 (1) *IN GENERAL.*—Section 6662(d)(2)(B)(i) (re-
2 lating to substantial authority) is amended to read as
3 follows:

4 “(i) the tax treatment of any item by
5 the taxpayer if the taxpayer had reasonable
6 belief that the tax treatment was more likely
7 than not the proper treatment, or”.

8 (2) *CONFORMING AMENDMENT.*—Section 6662(d)
9 is amended by adding at the end the following new
10 paragraph:

11 “(3) *SECRETARIAL LIST.*—For purposes of this
12 subsection, section 6664(d)(2), and section 6694(a)(1),
13 the Secretary may prescribe a list of positions for
14 which the Secretary believes there is not substantial
15 authority or there is no reasonable belief that the tax
16 treatment is more likely than not the proper tax
17 treatment. Such list (and any revisions thereof) shall
18 be published in the Federal Register or the Internal
19 Revenue Bulletin.”.

20 (c) *EFFECTIVE DATE.*—The amendments made by this
21 section shall apply to taxable years beginning after the date
22 of the enactment of this Act.

1 **SEC. 406. TAX SHELTER EXCEPTION TO CONFIDENTIALITY**
2 **PRIVILEGES RELATING TO TAXPAYER COM-**
3 **MUNICATIONS.**

4 (a) *IN GENERAL.*—Section 7525(b) (relating to section
5 not to apply to communications regarding corporate tax
6 shelters) is amended to read as follows:

7 “(b) *SECTION NOT TO APPLY TO COMMUNICATIONS*
8 *REGARDING TAX SHELTERS.*—The privilege under sub-
9 section (a) shall not apply to any written communication
10 which is—

11 “(1) *between a federally authorized tax practi-*
12 *tioner and—*

13 “(A) *any person,*

14 “(B) *any director, officer, employee, agent,*
15 *or representative of the person, or*

16 “(C) *any other person holding a capital or*
17 *profits interest in the person, and*

18 “(2) *in connection with the promotion of the di-*
19 *rect or indirect participation of the person in any tax*
20 *shelter (as defined in section 1274(b)(3)(C)).”.*

21 (b) *EFFECTIVE DATE.*—The amendment made by this
22 section shall apply to communications made on or after the
23 date of the enactment of this Act.

24 **SEC. 407. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

25 (a) *IN GENERAL.*—Section 6111 (relating to registra-
26 tion of tax shelters) is amended to read as follows:

1 **“SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

2 “(a) *IN GENERAL.*—*Each material advisor with re-*
3 *spect to any reportable transaction shall make a return (in*
4 *such form as the Secretary may prescribe) setting forth—*

5 “(1) *information identifying and describing the*
6 *transaction,*

7 “(2) *information describing any potential tax*
8 *benefits expected to result from the transaction, and*

9 “(3) *such other information as the Secretary*
10 *may prescribe.*

11 *Such return shall be filed not later than the date specified*
12 *by the Secretary.*

13 “(b) *DEFINITIONS.*—*For purposes of this section—*

14 “(1) *MATERIAL ADVISOR.*—

15 “(A) *IN GENERAL.*—*The term ‘material ad-*
16 *visor’ means any person—*

17 “(i) *who provides any material aid,*
18 *assistance, or advice with respect to orga-*
19 *nizing, managing, promoting, selling, im-*
20 *plementing, or carrying out any reportable*
21 *transaction, and*

22 “(ii) *who directly or indirectly derives*
23 *gross income in excess of the threshold*
24 *amount for such aid, assistance, or advice.*

25 “(B) *THRESHOLD AMOUNT.*—*For purposes*
26 *of subparagraph (A), the threshold amount is—*

1 “(i) \$50,000 in the case of a reportable
2 transaction substantially all of the tax bene-
3 fits from which are provided to natural per-
4 sons, and

5 “(ii) \$250,000 in any other case.

6 “(2) *REPORTABLE TRANSACTION*.—The term ‘re-
7 portable transaction’ has the meaning given to such
8 term by section 6707A(c).

9 “(c) *REGULATIONS*.—The Secretary may prescribe reg-
10 ulations which provide—

11 “(1) that only 1 person shall be required to meet
12 the requirements of subsection (a) in cases in which
13 2 or more persons would otherwise be required to meet
14 such requirements,

15 “(2) exemptions from the requirements of this
16 section, and

17 “(3) such rules as may be necessary or appro-
18 priate to carry out the purposes of this section.”.

19 (b) *CONFORMING AMENDMENTS*.—

20 (1) The item relating to section 6111 in the table
21 of sections for subchapter B of chapter 61 is amended
22 to read as follows:

 “Sec. 6111. Disclosure of reportable transactions.”.

23 (2)(A) So much of section 6112 as precedes sub-
24 section (c) thereof is amended to read as follows:

1 **“SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANS-**
2 **ACTIONS MUST KEEP LISTS OF ADVISEES.**

3 *“(a) IN GENERAL.—Each material advisor (as defined*
4 *in section 6111) with respect to any reportable transaction*
5 *(as defined in section 6707A(c)) shall maintain, in such*
6 *manner as the Secretary may by regulations prescribe, a*
7 *list—*

8 *“(1) identifying each person with respect to*
9 *whom such advisor acted as such a material advisor*
10 *with respect to such transaction, and*

11 *“(2) containing such other information as the*
12 *Secretary may by regulations require.*

13 *This section shall apply without regard to whether a mate-*
14 *rial advisor is required to file a return under section 6111*
15 *with respect to such transaction.”.*

16 *(B) Section 6112 is amended by redesignating*
17 *subsection (c) as subsection (b).*

18 *(C) Section 6112(b), as redesignated by subpara-*
19 *graph (B), is amended—*

20 *(i) by inserting “written” before “request”*
21 *in paragraph (1)(A), and*

22 *(ii) by striking “shall prescribe” in para-*
23 *graph (2) and inserting “may prescribe”.*

24 *(D) The item relating to section 6112 in the*
25 *table of sections for subchapter B of chapter 61 is*
26 *amended to read as follows:*

“Sec. 6112. Material advisors of reportable transactions must keep lists of advisees.”.

1 (3)(A) *The heading for section 6708 is amended*
2 *to read as follows:*

3 **“SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES**
4 **WITH RESPECT TO REPORTABLE TRANS-**
5 **ACTIONS.”.**

6 (B) *The item relating to section 6708 in the*
7 *table of sections for part I of subchapter B of chapter*
8 *68 is amended to read as follows:*

“Sec. 6708. Failure to maintain lists of advisees with respect to reportable transactions.”.

9 (c) *REQUIRED DISCLOSURE NOT SUBJECT TO CLAIM*
10 *OF CONFIDENTIALITY.—Subparagraph (A) of section*
11 *6112(b)(1), as redesignated by subsection (b)(2)(B), is*
12 *amended by adding at the end the following new flush sen-*
13 *tence:*

14 *“For purposes of this section, the identity of any per-*
15 *son on such list shall not be privileged.”.*

16 (d) *EFFECTIVE DATE.—*

17 (1) *IN GENERAL.—Except as provided in para-*
18 *graph (2), the amendments made by this section shall*
19 *apply to transactions with respect to which material*
20 *aid, assistance, or advice referred to in section*
21 *6111(b)(1)(A)(i) of the Internal Revenue Code of 1986*
22 *(as added by this section) is provided after the date*
23 *of the enactment of this Act.*

1 (2) *NO CLAIM OF CONFIDENTIALITY AGAINST DIS-*
2 *CLOSURE.—The amendment made by subsection (c)*
3 *shall take effect as if included in the amendments*
4 *made by section 142 of the Deficit Reduction Act of*
5 *1984.*

6 **SEC. 408. MODIFICATIONS TO PENALTY FOR FAILURE TO**
7 **REGISTER TAX SHELTERS.**

8 (a) *IN GENERAL.—Section 6707 (relating to failure to*
9 *furnish information regarding tax shelters) is amended to*
10 *read as follows:*

11 **“SEC. 6707. FAILURE TO FURNISH INFORMATION REGARD-**
12 **ING REPORTABLE TRANSACTIONS.**

13 “(a) *IN GENERAL.—If a person who is required to file*
14 *a return under section 6111(a) with respect to any report-*
15 *able transaction—*

16 “(1) *fails to file such return on or before the date*
17 *prescribed therefor, or*

18 “(2) *files false or incomplete information with*
19 *the Secretary with respect to such transaction,*
20 *such person shall pay a penalty with respect to such return*
21 *in the amount determined under subsection (b).*

22 “(b) *AMOUNT OF PENALTY.—*

23 “(1) *IN GENERAL.—Except as provided in para-*
24 *graph (2), the penalty imposed under subsection (a)*
25 *with respect to any failure shall be \$50,000.*

1 “(2) *LISTED TRANSACTIONS.*—*The penalty im-*
2 *posed under subsection (a) with respect to any listed*
3 *transaction shall be an amount equal to the greater*
4 *of—*

5 “(A) \$200,000, or

6 “(B) 50 percent of the gross income derived
7 *by such person with respect to aid, assistance, or*
8 *advice which is provided with respect to the list-*
9 *ed transaction before the date the return includ-*
10 *ing the transaction is filed under section 6111.*

11 *Subparagraph (B) shall be applied by substituting*
12 *‘75 percent’ for ‘50 percent’ in the case of an inten-*
13 *tional failure or act described in subsection (a).*

14 “(c) *CERTAIN RULES TO APPLY.*—*The provisions of*
15 *section 6707A(d) shall apply to any penalty imposed under*
16 *this section.*

17 “(d) *REPORTABLE AND LISTED TRANSACTIONS.*—*The*
18 *terms ‘reportable transaction’ and ‘listed transaction’ have*
19 *the respective meanings given to such terms by section*
20 *6707A(c).”.*

21 (b) *CLERICAL AMENDMENT.*—*The item relating to sec-*
22 *tion 6707 in the table of sections for part I of subchapter*
23 *B of chapter 68 is amended by striking “tax shelters” and*
24 *inserting “reportable transactions”.*

1 (c) *EFFECTIVE DATE.*—*The amendments made by this*
2 *section shall apply to returns the due date for which is after*
3 *the date of the enactment of this Act.*

4 **SEC. 409. MODIFICATION OF PENALTY FOR FAILURE TO**
5 **MAINTAIN LISTS OF INVESTORS.**

6 (a) *IN GENERAL.*—*Subsection (a) of section 6708 is*
7 *amended to read as follows:*

8 “(a) *IMPOSITION OF PENALTY.*—

9 “(1) *IN GENERAL.*—*If any person who is re-*
10 *quired to maintain a list under section 6112(a) fails*
11 *to make such list available upon written request to*
12 *the Secretary in accordance with section*
13 *6112(b)(1)(A) within 20 business days after the date*
14 *of the Secretary’s request, such person shall pay a*
15 *penalty of \$10,000 for each day of such failure after*
16 *such 20th day.*

17 “(2) *REASONABLE CAUSE EXCEPTION.*—*No pen-*
18 *alty shall be imposed by paragraph (1) with respect*
19 *to the failure on any day if such failure is due to rea-*
20 *sonable cause.”.*

21 (b) *EFFECTIVE DATE.*—*The amendment made by this*
22 *section shall apply to requests made after the date of the*
23 *enactment of this Act.*

1 **SEC. 410. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN**
2 **CONDUCT RELATED TO TAX SHELTERS AND**
3 **REPORTABLE TRANSACTIONS.**

4 (a) *IN GENERAL.*—Section 7408 (relating to action to
5 enjoin promoters of abusive tax shelters, etc.) is amended
6 by redesignating subsection (c) as subsection (d) and by
7 striking subsections (a) and (b) and inserting the following
8 new subsections:

9 “(a) *AUTHORITY TO SEEK INJUNCTION.*—A civil ac-
10 tion in the name of the United States to enjoin any person
11 from further engaging in specified conduct may be com-
12 menced at the request of the Secretary. Any action under
13 this section shall be brought in the district court of the
14 United States for the district in which such person resides,
15 has his principal place of business, or has engaged in speci-
16 fied conduct. The court may exercise its jurisdiction over
17 such action (as provided in section 7402(a)) separate and
18 apart from any other action brought by the United States
19 against such person.

20 “(b) *ADJUDICATION AND DECREE.*—In any action
21 under subsection (a), if the court finds—

22 “(1) that the person has engaged in any specified
23 conduct, and

24 “(2) that injunctive relief is appropriate to pre-
25 vent recurrence of such conduct,

1 *the court may enjoin such person from engaging in such*
2 *conduct or in any other activity subject to penalty under*
3 *this title.*

4 “(c) *SPECIFIED CONDUCT.*—*For purposes of this sec-*
5 *tion, the term ‘specified conduct’ means any action, or fail-*
6 *ure to take action, subject to penalty under section 6700,*
7 *6701, 6707, or 6708.”.*

8 (b) *CONFORMING AMENDMENTS.*—

9 (1) *The heading for section 7408 is amended to*
10 *read as follows:*

11 **“SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RE-**
12 **LATED TO TAX SHELTERS AND REPORTABLE**
13 **TRANSACTIONS.”.**

14 (2) *The table of sections for subchapter A of*
15 *chapter 67 is amended by striking the item relating*
16 *to section 7408 and inserting the following new item:*

“Sec. 7408. Actions to enjoin specified conduct related to tax shelters and re-
portable transactions.”.

17 (c) *EFFECTIVE DATE.*—*The amendment made by this*
18 *section shall take effect on the day after the date of the en-*
19 *actment of this Act.*

20 **SEC. 411. UNDERSTATEMENT OF TAXPAYER’S LIABILITY BY**
21 **INCOME TAX RETURN PREPARER.**

22 (a) *STANDARDS CONFORMED TO TAXPAYER STAND-*
23 *ARDS.*—*Section 6694(a) (relating to understatements due to*
24 *unrealistic positions) is amended—*

1 (1) by striking “realistic possibility of being sus-
2 tained on its merits” in paragraph (1) and inserting
3 “reasonable belief that the tax treatment in such posi-
4 tion was more likely than not the proper treatment”,

5 (2) by striking “or was frivolous” in paragraph
6 (3) and inserting “or there was no reasonable basis
7 for the tax treatment of such position”, and

8 (3) by striking “UNREALISTIC” in the heading
9 and inserting “IMPROPER”.

10 (b) *AMOUNT OF PENALTY.*—Section 6694 is
11 amended—

12 (1) by striking “\$250” in subsection (a) and in-
13 serting “\$1,000”, and

14 (2) by striking “\$1,000” in subsection (b) and
15 inserting “\$5,000”.

16 (c) *EFFECTIVE DATE.*—The amendments made by this
17 section shall apply to documents prepared after the date
18 of the enactment of this Act.

19 **SEC. 412. PENALTY ON FAILURE TO REPORT INTERESTS IN**
20 **FOREIGN FINANCIAL ACCOUNTS.**

21 (a) *IN GENERAL.*—Section 5321(a)(5) of title 31,
22 United States Code, is amended to read as follows:

23 “(5) *FOREIGN FINANCIAL AGENCY TRANSACTION*
24 *VIOLATION.*—

1 “(A) *PENALTY AUTHORIZED.*—*The Sec-*
2 *retary of the Treasury may impose a civil money*
3 *penalty on any person who violates, or causes*
4 *any violation of, any provision of section 5314.*

5 “(B) *AMOUNT OF PENALTY.*—

6 “(i) *IN GENERAL.*—*Except as provided*
7 *in subparagraph (C), the amount of any*
8 *civil penalty imposed under subparagraph*
9 *(A) shall not exceed \$5,000.*

10 “(ii) *REASONABLE CAUSE EXCEP-*
11 *TION.*—*No penalty shall be imposed under*
12 *subparagraph (A) with respect to any viola-*
13 *tion if—*

14 “(I) *such violation was due to*
15 *reasonable cause, and*

16 “(II) *the amount of the trans-*
17 *action or the balance in the account at*
18 *the time of the transaction was prop-*
19 *erly reported.*

20 “(C) *WILLFUL VIOLATIONS.*—*In the case of*
21 *any person willfully violating, or willfully caus-*
22 *ing any violation of, any provision of section*
23 *5314—*

1 “(i) *the maximum penalty under sub-*
2 *paragraph (B)(i) shall be increased to the*
3 *greater of—*

4 “(I) \$25,000, or

5 “(II) *the amount (not exceeding*
6 *\$100,000) determined under subpara-*
7 *graph (D), and*

8 “(ii) *subparagraph (B)(ii) shall not*
9 *apply.*

10 “(D) *AMOUNT.—The amount determined*
11 *under this subparagraph is—*

12 “(i) *in the case of a violation involving*
13 *a transaction, the amount of the trans-*
14 *action, or*

15 “(ii) *in the case of a violation involv-*
16 *ing a failure to report the existence of an*
17 *account or any identifying information re-*
18 *quired to be provided with respect to an ac-*
19 *count, the balance in the account at the*
20 *time of the violation.”.*

21 (b) *EFFECTIVE DATE.—The amendment made by this*
22 *section shall apply to violations occurring after the date of*
23 *the enactment of this Act.*

1 **SEC. 413. FRIVOLOUS TAX SUBMISSIONS.**

2 (a) *CIVIL PENALTIES.*—Section 6702 is amended to
3 read as follows:

4 **“SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.**

5 “(a) *CIVIL PENALTY FOR FRIVOLOUS TAX RE-*
6 *TURNS.*—A person shall pay a penalty of \$5,000 if—

7 “(1) such person files what purports to be a re-
8 turn of a tax imposed by this title but which—

9 “(A) does not contain information on which
10 the substantial correctness of the self-assessment
11 may be judged, or

12 “(B) contains information that on its face
13 indicates that the self-assessment is substantially
14 incorrect; and

15 “(2) the conduct referred to in paragraph (1)—

16 “(A) is based on a position which the Sec-
17 retary has identified as frivolous under sub-
18 section (c), or

19 “(B) reflects a desire to delay or impede the
20 administration of Federal tax laws.

21 “(b) *CIVIL PENALTY FOR SPECIFIED FRIVOLOUS SUB-*
22 *MISSIONS.*—

23 “(1) *IMPOSITION OF PENALTY.*—Except as pro-
24 vided in paragraph (3), any person who submits a
25 specified frivolous submission shall pay a penalty of
26 \$5,000.

1 “(2) *SPECIFIED FRIVOLOUS SUBMISSION.*—*For*
2 *purposes of this section—*

3 “(A) *SPECIFIED FRIVOLOUS SUBMISSION.*—
4 *The term ‘specified frivolous submission’ means*
5 *a specified submission if any portion of such*
6 *submission—*

7 “(i) *is based on a position which the*
8 *Secretary has identified as frivolous under*
9 *subsection (c), or*

10 “(ii) *reflects a desire to delay or im-*
11 *pede the administration of Federal tax*
12 *laws.*

13 “(B) *SPECIFIED SUBMISSION.*—*The term*
14 *‘specified submission’ means—*

15 “(i) *a request for a hearing under—*

16 “(I) *section 6320 (relating to no-*
17 *tice and opportunity for hearing upon*
18 *filing of notice of lien), or*

19 “(II) *section 6330 (relating to no-*
20 *tice and opportunity for hearing before*
21 *levy), and*

22 “(ii) *an application under—*

23 “(I) *section 6159 (relating to*
24 *agreements for payment of tax liability*
25 *in installments),*

1 “(II) section 7122 (relating to
2 *compromises*), or

3 “(III) section 7811 (relating to
4 *taxpayer assistance orders*).

5 “(3) *OPPORTUNITY TO WITHDRAW SUBMIS-*
6 *SION.—If the Secretary provides a person with notice*
7 *that a submission is a specified frivolous submission*
8 *and such person withdraws such submission within*
9 *30 days after such notice, the penalty imposed under*
10 *paragraph (1) shall not apply with respect to such*
11 *submission.*

12 “(c) *LISTING OF FRIVOLOUS POSITIONS.—The Sec-*
13 *retary shall prescribe (and periodically revise) a list of posi-*
14 *tions which the Secretary has identified as being frivolous*
15 *for purposes of this subsection. The Secretary shall not in-*
16 *clude in such list any position that the Secretary deter-*
17 *mines meets the requirement of section*
18 *6662(d)(2)(B)(i)(II).*

19 “(d) *REDUCTION OF PENALTY.—The Secretary may*
20 *reduce the amount of any penalty imposed under this sec-*
21 *tion if the Secretary determines that such reduction would*
22 *promote compliance with and administration of the Federal*
23 *tax laws.*

1 “(e) *PENALTIES IN ADDITION TO OTHER PEN-*
2 *ALTIES.*—*The penalties imposed by this section shall be in*
3 *addition to any other penalty provided by law.*”.

4 (b) *TREATMENT OF FRIVOLOUS REQUESTS FOR HEAR-*
5 *INGS BEFORE LEVY.*—

6 (1) *FRIVOLOUS REQUESTS DISREGARDED.*—*Sec-*
7 *tion 6330 (relating to notice and opportunity for*
8 *hearing before levy) is amended by adding at the end*
9 *the following new subsection:*

10 “(g) *FRIVOLOUS REQUESTS FOR HEARING, ETC.*—
11 *Notwithstanding any other provision of this section, if the*
12 *Secretary determines that any portion of a request for a*
13 *hearing under this section or section 6320 meets the require-*
14 *ment of clause (i) or (ii) of section 6702(b)(2)(A), then the*
15 *Secretary may treat such portion as if it were never sub-*
16 *mitted and such portion shall not be subject to any further*
17 *administrative or judicial review.*”.

18 (2) *PRECLUSION FROM RAISING FRIVOLOUS*
19 *ISSUES AT HEARING.*—*Section 6330(c)(4) is*
20 *amended—*

21 (A) *by striking “(A)” and inserting*
22 *“(A)(i)”;*

23 (B) *by striking “(B)” and inserting “(i)”;*

24 (C) *by striking the period at the end of the*
25 *first sentence and inserting “; or”; and*

1 (D) by inserting after subparagraph (A)(ii)
2 (as so redesignated) the following:

3 “(B) the issue meets the requirement of
4 clause (i) or (ii) of section 6702(b)(2)(A).”.

5 (3) STATEMENT OF GROUNDS.—Section
6 6330(b)(1) is amended by striking “under subsection
7 (a)(3)(B)” and inserting “in writing under subsection
8 (a)(3)(B) and states the grounds for the requested
9 hearing”.

10 (c) TREATMENT OF FRIVOLOUS REQUESTS FOR HEAR-
11 INGS UPON FILING OF NOTICE OF LIEN.—Section 6320 is
12 amended—

13 (1) in subsection (b)(1), by striking “under sub-
14 section (a)(3)(B)” and inserting “in writing under
15 subsection (a)(3)(B) and states the grounds for the re-
16 quested hearing”, and

17 (2) in subsection (c), by striking “and (e)” and
18 inserting “(e), and (g)”.

19 (d) TREATMENT OF FRIVOLOUS APPLICATIONS FOR
20 OFFERS-IN-COMPROMISE AND INSTALLMENT AGREE-
21 MENTS.—Section 7122 is amended by adding at the end
22 the following new subsection:

23 “(e) FRIVOLOUS SUBMISSIONS, ETC.—Notwith-
24 standing any other provision of this section, if the Secretary
25 determines that any portion of an application for an offer-

1 *in-compromise or installment agreement submitted under*
2 *this section or section 6159 meets the requirement of clause*
3 *(i) or (ii) of section 6702(b)(2)(A), then the Secretary may*
4 *treat such portion as if it were never submitted and such*
5 *portion shall not be subject to any further administrative*
6 *or judicial review.”.*

7 (e) *CLERICAL AMENDMENT.—The table of sections for*
8 *part I of subchapter B of chapter 68 is amended by striking*
9 *the item relating to section 6702 and inserting the following*
10 *new item:*

“Sec. 6702. Frivolous tax submissions.”.

11 (f) *EFFECTIVE DATE.—The amendments made by this*
12 *section shall apply to submissions made and issues raised*
13 *after the date on which the Secretary first prescribes a list*
14 *under section 6702(c) of the Internal Revenue Code of 1986,*
15 *as amended by subsection (a).*

16 **SEC. 414. REGULATION OF INDIVIDUALS PRACTICING BE-**
17 **FORE THE DEPARTMENT OF TREASURY.**

18 (a) *CENSURE; IMPOSITION OF PENALTY.—*

19 (1) *IN GENERAL.—Section 330(b) of title 31,*
20 *United States Code, is amended—*

21 (A) *by inserting “, or censure,” after “De-*
22 *partment”, and*

23 (B) *by adding at the end the following new*
24 *flush sentence:*

1 *“The Secretary may impose a monetary penalty on any*
2 *representative described in the preceding sentence. If the*
3 *representative was acting on behalf of an employer or any*
4 *firm or other entity in connection with the conduct giving*
5 *rise to such penalty, the Secretary may impose a monetary*
6 *penalty on such employer, firm, or entity if it knew, or*
7 *reasonably should have known, of such conduct. Such pen-*
8 *alty shall not exceed the gross income derived (or to be de-*
9 *rived) from the conduct giving rise to the penalty and may*
10 *be in addition to, or in lieu of, any suspension, disbarment,*
11 *or censure of the representative.”.*

12 (2) *EFFECTIVE DATE.—The amendments made*
13 *by this subsection shall apply to actions taken after*
14 *the date of the enactment of this Act.*

15 (b) *TAX SHELTER OPINIONS, ETC.—Section 330 of*
16 *such title 31 is amended by adding at the end the following*
17 *new subsection:*

18 *“(d) Nothing in this section or in any other provision*
19 *of law shall be construed to limit the authority of the Sec-*
20 *retary of the Treasury to impose standards applicable to*
21 *the rendering of written advice with respect to any entity,*
22 *transaction plan or arrangement, or other plan or arrange-*
23 *ment, which is of a type which the Secretary determines*
24 *as having a potential for tax avoidance or evasion.”.*

1 **SEC. 415. PENALTY ON PROMOTERS OF TAX SHELTERS.**

2 (a) *PENALTY ON PROMOTING ABUSIVE TAX SHEL-*
3 *TERS.—Section 6700(a) is amended by adding at the end*
4 *the following new sentence: “Notwithstanding the first sen-*
5 *tence, if an activity with respect to which a penalty im-*
6 *posed under this subsection involves a statement described*
7 *in paragraph (2)(A), the amount of the penalty shall be*
8 *equal to 50 percent of the gross income derived (or to be*
9 *derived) from such activity by the person on which the pen-*
10 *alty is imposed.”.*

11 (b) *EFFECTIVE DATE.—The amendment made by this*
12 *section shall apply to activities after the date of the enact-*
13 *ment of this Act.*

14 **SEC. 416. STATUTE OF LIMITATIONS FOR TAXABLE YEARS**
15 **FOR WHICH REQUIRED LISTED TRANS-**
16 **ACTIONS NOT REPORTED.**

17 (a) *IN GENERAL.—Section 6501(c) (relating to excep-*
18 *tions) is amended by adding at the end the following new*
19 *paragraph:*

20 “(10) *LISTED TRANSACTIONS.—If a taxpayer*
21 *fails to include on any return or statement for any*
22 *taxable year any information with respect to a listed*
23 *transaction (as defined in section 6707A(c)(2)) which*
24 *is required under section 6011 to be included with*
25 *such return or statement, the time for assessment of*
26 *any tax imposed by this title with respect to such*

1 *transaction shall not expire before the date which is*
2 *1 year after the earlier of—*

3 *“(A) the date on which the Secretary is fur-*
4 *nished the information so required; or*

5 *“(B) the date that a material advisor (as*
6 *defined in section 6111) meets the requirements*
7 *of section 6112 with respect to a request by the*
8 *Secretary under section 6112(b) relating to such*
9 *transaction with respect to such taxpayer.”.*

10 *(b) EFFECTIVE DATE.—The amendment made by this*
11 *section shall apply to taxable years with respect to which*
12 *the period for assessing a deficiency did not expire before*
13 *the date of the enactment of this Act.*

14 **SEC. 417. DENIAL OF DEDUCTION FOR INTEREST ON UN-**
15 **DERPAYMENTS ATTRIBUTABLE TO NONDIS-**
16 **CLOSED REPORTABLE AND NONECONOMIC**
17 **SUBSTANCE TRANSACTIONS.**

18 *(a) IN GENERAL.—Section 163 (relating to deduction*
19 *for interest) is amended by redesignating subsection (m) as*
20 *subsection (n) and by inserting after subsection (l) the fol-*
21 *lowing new subsection:*

22 *“(m) INTEREST ON UNPAID TAXES ATTRIBUTABLE TO*
23 *NONDISCLOSED REPORTABLE TRANSACTIONS AND NON-*
24 *ECONOMIC SUBSTANCE TRANSACTIONS.—No deduction shall*
25 *be allowed under this chapter for any interest paid or ac-*

1 *crued under section 6601 on any underpayment of tax*
2 *which is attributable to—*

3 *“(1) the portion of any reportable transaction*
4 *understatement (as defined in section 6662A(b)) with*
5 *respect to which the requirement of section*
6 *6664(d)(2)(A) is not met, or*

7 *“(2) any noneconomic substance transaction un-*
8 *derstatement (as defined in section 6662B(c)).”.*

9 *(b) EFFECTIVE DATE.—The amendments made by this*
10 *section shall apply to transactions in taxable years begin-*
11 *ning after the date of the enactment of this Act.*

12 **SEC. 418. AUTHORIZATION OF APPROPRIATIONS FOR TAX**

13 **LAW ENFORCEMENT.**

14 *There is authorized to be appropriated \$300,000,000*
15 *for each fiscal year beginning after September 30, 2003, for*
16 *the purpose of carrying out tax law enforcement to combat*
17 *tax avoidance transactions and other tax shelters, including*
18 *the use of offshore financial accounts to conceal taxable in-*
19 *come.*

20 ***Subtitle B—Other Corporate***
21 ***Governance Provisions***

22 **SEC. 421. AFFIRMATION OF CONSOLIDATED RETURN REGU-**
23 **LATION AUTHORITY.**

24 *(a) IN GENERAL.—Section 1502 (relating to consoli-*
25 *dated return regulations) is amended by adding at the end*

1 *the following new sentence: “In prescribing such regula-*
2 *tions, the Secretary may prescribe rules applicable to cor-*
3 *porations filing consolidated returns under section 1501*
4 *that are different from other provisions of this title that*
5 *would apply if such corporations filed separate returns.”.*

6 (b) *RESULT NOT OVERTURNED.—Notwithstanding*
7 *subsection (a), the Internal Revenue Code of 1986 shall be*
8 *construed by treating Treasury regulation § 1.1502–*
9 *20(c)(1)(iii) (as in effect on January 1, 2001) as being in-*
10 *applicable to the type of factual situation in 255 F.3d 1357*
11 *(Fed. Cir. 2001).*

12 (c) *EFFECTIVE DATE.—The provisions of this section*
13 *shall apply to taxable years beginning before, on, or after*
14 *the date of the enactment of this Act.*

15 **SEC. 422. SIGNING OF CORPORATE TAX RETURNS BY CHIEF**
16 **EXECUTIVE OFFICER.**

17 (a) *IN GENERAL.—Section 6062 (relating to signing*
18 *of corporation returns) is amended by inserting after the*
19 *first sentence the following new sentences: “The return of*
20 *a corporation with respect to income shall also include a*
21 *declaration signed by the chief executive officer of such cor-*
22 *poration (or other such officer of the corporation as the Sec-*
23 *retary may designate if the corporation does not have a*
24 *chief executive officer), under penalties of perjury, that the*
25 *chief executive officer ensures that such return complies*

1 *with this title and that the chief executive officer was pro-*
2 *vided reasonable assurance of the accuracy of all material*
3 *aspects of such return. The preceding sentence shall not*
4 *apply to any return of a regulated investment company*
5 *(within the meaning of section 851).”.*

6 (b) *EFFECTIVE DATE.*—*The amendment made by this*
7 *section shall apply to returns filed after the date of the en-*
8 *actment of this Act.*

9 **SEC. 423. DENIAL OF DEDUCTION FOR CERTAIN FINES, PEN-**
10 **ALTIES, AND OTHER AMOUNTS.**

11 (a) *IN GENERAL.*—*Subsection (f) of section 162 (relat-*
12 *ing to trade or business expenses) is amended to read as*
13 *follows:*

14 “(f) *FINES, PENALTIES, AND OTHER AMOUNTS.*—

15 “(1) *IN GENERAL.*—*Except as provided in para-*
16 *graph (2), no deduction otherwise allowable shall be*
17 *allowed under this chapter for any amount paid or*
18 *incurred (whether by suit, agreement, or otherwise)*
19 *to, or at the direction of, a government or entity de-*
20 *scribed in paragraph (4) in relation to the violation*
21 *of any law or the investigation or inquiry by such*
22 *government or entity into the potential violation of*
23 *any law.*

24 “(2) *EXCEPTION FOR AMOUNTS CONSTITUTING*
25 *RESTITUTION.*—*Paragraph (1) shall not apply to any*

1 *amount which the taxpayer establishes constitutes res-*
2 *titution for damage or harm caused by the violation*
3 *of any law or the potential violation of any law. This*
4 *paragraph shall not apply to any amount paid or in-*
5 *curring as reimbursement to the government or entity*
6 *for the costs of any investigation or litigation.*

7 *“(3) EXCEPTION FOR AMOUNTS PAID OR IN-*
8 *CURRED AS THE RESULT OF CERTAIN COURT OR-*
9 *DERS.—Paragraph (1) shall not apply to any*
10 *amount paid or incurred by order of a court in a suit*
11 *in which no government or entity described in para-*
12 *graph (4) is a party.*

13 *“(4) CERTAIN NONGOVERNMENTAL REGULATORY*
14 *ENTITIES.—An entity is described in this paragraph*
15 *if it is—*

16 *“(A) a nongovernmental entity which exer-*
17 *cises self-regulatory powers (including imposing*
18 *sanctions) in connection with a qualified board*
19 *or exchange (as defined in section 1256(g)(7)), or*

20 *“(B) to the extent provided in regulations,*
21 *a nongovernmental entity which exercises self-*
22 *regulatory powers (including imposing sanc-*
23 *tions) as part of performing an essential govern-*
24 *mental function.”.*

1 (ii) by redesignating paragraphs (1)
2 and (2) as subparagraphs (A) and (B), re-
3 spectively.

4 (B) The heading for section 162(g) is
5 amended by inserting “OR PUNITIVE DAMAGES”
6 after “LAWS”.

7 (b) *INCLUSION IN INCOME OF PUNITIVE DAMAGES*
8 *PAID BY INSURER OR OTHERWISE.*—

9 (1) *IN GENERAL.*—Part II of subchapter B of
10 chapter 1 (relating to items specifically included in
11 gross income) is amended by adding at the end the
12 following new section:

13 “**SEC. 91. PUNITIVE DAMAGES COMPENSATED BY INSUR-**
14 **ANCE OR OTHERWISE.**”

15 “Gross income shall include any amount paid to or
16 on behalf of a taxpayer as insurance or otherwise by reason
17 of the taxpayer’s liability (or agreement) to pay punitive
18 damages.”.

19 (2) *REPORTING REQUIREMENTS.*—Section 6041
20 (relating to information at source) is amended by
21 adding at the end the following new subsection:

22 “(f) *SECTION TO APPLY TO PUNITIVE DAMAGES COM-*
23 *PENSATION.*—This section shall apply to payments by a
24 person to or on behalf of another person as insurance or

1 *otherwise by reason of the other person's liability (or agree-*
2 *ment) to pay punitive damages."*

3 (3) *CONFORMING AMENDMENT.—The table of sec-*
4 *tions for part II of subchapter B of chapter 1 is*
5 *amended by adding at the end the following new item:*
"Sec. 91. Punitive damages compensated by insurance or otherwise."

6 (c) *EFFECTIVE DATE.—The amendments made by this*
7 *section shall apply to damages paid or incurred on or after*
8 *the date of the enactment of this Act.*

9 **SEC. 425. INCREASE IN CRIMINAL MONETARY PENALTY LIM-**
10 **ITATION FOR THE UNDERPAYMENT OR OVER-**
11 **PAYMENT OF TAX DUE TO FRAUD.**

12 (a) *IN GENERAL.—Section 7206 (relating to fraud and*
13 *false statements) is amended—*

14 (1) *by striking "Any person who—" and insert-*
15 *ing "(a) IN GENERAL.—Any person who—", and*

16 (2) *by adding at the end the following new sub-*
17 *section:*

18 (b) *INCREASE IN MONETARY LIMITATION FOR UN-*
19 *DERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.—*
20 *If any portion of any underpayment (as defined in section*
21 *6664(a)) or overpayment (as defined in section 6401(a)) of*
22 *tax required to be shown on a return is attributable to*
23 *fraudulent action described in subsection (a), the applicable*
24 *dollar amount under subsection (a) shall in no event be less*
25 *than an amount equal to such portion. A rule similar to*

1 *the rule under section 6663(b) shall apply for purposes of*
2 *determining the portion so attributable.”.*

3 *(b) INCREASE IN PENALTIES.—*

4 *(1) ATTEMPT TO EVADE OR DEFEAT TAX.—Section*
5 *7201 is amended—*

6 *(A) by striking “\$100,000” and inserting*
7 *“\$250,000”,*

8 *(B) by striking “\$500,000” and inserting*
9 *“\$1,000,000”, and*

10 *(C) by striking “5 years” and inserting “10*
11 *years”.*

12 *(2) WILLFUL FAILURE TO FILE RETURN, SUPPLY*
13 *INFORMATION, OR PAY TAX.—Section 7203 is*
14 *amended—*

15 *(A) in the first sentence—*

16 *(i) by striking “misdemeanor” and in-*
17 *serting “felony”, and*

18 *(ii) by striking “1 year” and inserting*
19 *“10 years”, and*

20 *(B) by striking the third sentence.*

21 *(3) FRAUD AND FALSE STATEMENTS.—Section*
22 *7206(a) (as redesignated by subsection (a)) is*
23 *amended—*

24 *(A) by striking “\$100,000” and inserting*
25 *“\$250,000”,*

1 (B) by striking “\$500,000” and inserting
2 “\$1,000,000”, and

3 (C) by striking “3 years” and inserting “5
4 years”.

5 (c) *EFFECTIVE DATE.*—*The amendments made by this*
6 *section shall apply to underpayments and overpayments at-*
7 *tributable to actions occurring after the date of the enact-*
8 *ment of this Act.*

9 ***Subtitle C—Enron-Related Tax***
10 ***Shelter Provisions***

11 ***SEC. 431. LIMITATION ON TRANSFER OR IMPORTATION OF***
12 ***BUILT-IN LOSSES.***

13 (a) *IN GENERAL.*—*Section 362 (relating to basis to*
14 *corporations) is amended by adding at the end the following*
15 *new subsection:*

16 “(e) *LIMITATIONS ON BUILT-IN LOSSES.*—

17 “(1) *LIMITATION ON IMPORTATION OF BUILT-IN*
18 *LOSSES.*—

19 “(A) *IN GENERAL.*—*If in any transaction*
20 *described in subsection (a) or (b) there would*
21 *(but for this subsection) be an importation of a*
22 *net built-in loss, the basis of each property de-*
23 *scribed in subparagraph (B) which is acquired*
24 *in such transaction shall (notwithstanding sub-*

1 sections (a) and (b)) be its fair market value im-
2 mediately after such transaction.

3 “(B) *PROPERTY DESCRIBED.*—For purposes
4 of subparagraph (A), property is described in
5 this subparagraph if—

6 “(i) gain or loss with respect to such
7 property is not subject to tax under this
8 subtitle in the hands of the transferor imme-
9 diately before the transfer, and

10 “(ii) gain or loss with respect to such
11 property is subject to such tax in the hands
12 of the transferee immediately after such
13 transfer.

14 In any case in which the transferor is a partner-
15 ship, the preceding sentence shall be applied by
16 treating each partner in such partnership as
17 holding such partner’s proportionate share of the
18 property of such partnership.

19 “(C) *IMPORTATION OF NET BUILT-IN*
20 *LOSS.*—For purposes of subparagraph (A), there
21 is an importation of a net built-in loss in a
22 transaction if the transferee’s aggregate adjusted
23 bases of property described in subparagraph (B)
24 which is transferred in such transaction would
25 (but for this paragraph) exceed the fair market

1 *value of such property immediately after such*
2 *transaction.”.*

3 “(2) *LIMITATION ON TRANSFER OF BUILT-IN*
4 *LOSSES IN SECTION 351 TRANSACTIONS.—*

5 “(A) *IN GENERAL.—If—*

6 “(i) *property is transferred by a trans-*
7 *feror in any transaction which is described*
8 *in subsection (a) and which is not described*
9 *in paragraph (1) of this subsection, and*

10 “(ii) *the transferee’s aggregate adjusted*
11 *bases of such property so transferred would*
12 *(but for this paragraph) exceed the fair*
13 *market value of such property immediately*
14 *after such transaction,*

15 *then, notwithstanding subsection (a), the trans-*
16 *feree’s aggregate adjusted bases of the property so*
17 *transferred shall not exceed the fair market value*
18 *of such property immediately after such trans-*
19 *action.*

20 “(B) *ALLOCATION OF BASIS REDUCTION.—*

21 *The aggregate reduction in basis by reason of*
22 *subparagraph (A) shall be allocated among the*
23 *property so transferred in proportion to their re-*
24 *spective built-in losses immediately before the*
25 *transaction.*

1 “(C) *EXCEPTION FOR TRANSFERS WITHIN*
2 *AFFILIATED GROUP.*—Subparagraph (A) shall
3 not apply to any transaction if the transferor
4 owns stock in the transferee meeting the require-
5 ments of section 1504(a)(2). In the case of prop-
6 erty to which subparagraph (A) does not apply
7 by reason of the preceding sentence, the trans-
8 feror’s basis in the stock received for such prop-
9 erty shall not exceed its fair market value imme-
10 diately after the transfer.”.

11 (b) *COMPARABLE TREATMENT WHERE LIQUIDA-*
12 *TION.*—Paragraph (1) of section 334(b) (relating to liquida-
13 tion of subsidiary) is amended to read as follows:

14 “(1) *IN GENERAL.*—If property is received by a
15 corporate distributee in a distribution in a complete
16 liquidation to which section 332 applies (or in a
17 transfer described in section 337(b)(1)), the basis of
18 such property in the hands of such distributee shall
19 be the same as it would be in the hands of the trans-
20 feror; except that the basis of such property in the
21 hands of such distributee shall be the fair market
22 value of the property at the time of the distribution—

23 “(A) in any case in which gain or loss is
24 recognized by the liquidating corporation with
25 respect to such property, or

1 “(B) in any case in which the liquidating
2 corporation is a foreign corporation, the cor-
3 porate distributee is a domestic corporation, and
4 the corporate distributee’s aggregate adjusted
5 bases of property described in section
6 362(e)(1)(B) which is distributed in such liq-
7 uidation would (but for this subparagraph) ex-
8 ceed the fair market value of such property im-
9 mediately after such liquidation.”.

10 (c) *EFFECTIVE DATE.*—The amendments made by this
11 section shall apply to transactions after February 13, 2003.

12 **SEC. 432. NO REDUCTION OF BASIS UNDER SECTION 734 IN**
13 **STOCK HELD BY PARTNERSHIP IN COR-**
14 **PORATE PARTNER.**

15 (a) *IN GENERAL.*—Section 755 is amended by adding
16 at the end the following new subsection:

17 “(c) *NO ALLOCATION OF BASIS DECREASE TO STOCK*
18 *OF CORPORATE PARTNER.*—In making an allocation under
19 subsection (a) of any decrease in the adjusted basis of part-
20 nership property under section 734(b)—

21 “(1) no allocation may be made to stock in a
22 corporation (or any person which is related (within
23 the meaning of section 267(b) or 707(b)(1)) to such
24 corporation) which is a partner in the partnership,
25 and

1 “(2) any amount not allocable to stock by reason
2 of paragraph (1) shall be allocated under subsection
3 (a) to other partnership property in such manner as
4 the Secretary may prescribe.

5 Gain shall be recognized to the partnership to the extent
6 that the amount required to be allocated under paragraph
7 (2) to other partnership property exceeds the aggregate ad-
8 justed basis of such other property immediately before the
9 allocation required by paragraph (2).”.

10 (b) *EFFECTIVE DATE.*—The amendment made by this
11 section shall apply to distributions after February 13, 2003.

12 **SEC. 433. REPEAL OF SPECIAL RULES FOR FASITS.**

13 (a) *IN GENERAL.*—Part V of subchapter M of chapter
14 1 (relating to financial asset securitization investment
15 trusts) is hereby repealed.

16 (b) *CONFORMING AMENDMENTS.*—

17 (1) Paragraph (6) of section 56(g) is amended by
18 striking “REMIC, or FASIT” and inserting “or
19 REMIC”.

20 (2) Clause (ii) of section 382(l)(4)(B) is amended
21 by striking “a REMIC to which part IV of subchapter
22 M applies, or a FASIT to which part V of subchapter
23 M applies,” and inserting “or a REMIC to which
24 part IV of subchapter M applies,”.

1 (3) Paragraph (1) of section 582(c) is amended
2 by striking “, and any regular interest in a FASIT,”.

3 (4) Subparagraph (E) of section 856(c)(5) is
4 amended by striking the last sentence.

5 (5)(A) Section 860G(a)(1) is amended by adding
6 at the end the following new sentence: “An interest
7 shall not fail to qualify as a regular interest solely be-
8 cause the specified principal amount of the regular
9 interest (or the amount of interest accrued on the reg-
10 ular interest) can be reduced as a result of the non-
11 occurrence of 1 or more contingent payments with re-
12 spect to any reverse mortgage loan held by the
13 REMIC if, on the startup day for the REMIC, the
14 sponsor reasonably believes that all principal and in-
15 terest due under the regular interest will be paid at
16 or prior to the liquidation of the REMIC.”.

17 (B) The last sentence of section 860G(a)(3) is
18 amended by inserting “, and any reverse mortgage
19 loan (and each balance increase on such loan meeting
20 the requirements of subparagraph (A)(iii)) shall be
21 treated as an obligation secured by an interest in real
22 property” before the period at the end.

23 (6) Paragraph (3) of section 860G(a) is amended
24 by adding “and” at the end of subparagraph (B), by

1 *striking “, and” at the end of subparagraph (C) and*
2 *inserting a period, and by striking subparagraph (D).*

3 *(7) Section 860G(a)(3), as amended by para-*
4 *graph (6), is amended by adding at the end the fol-*
5 *lowing new sentence: “For purposes of subparagraph*
6 *(A), if more than 50 percent of the obligations trans-*
7 *ferred to, or purchased by, the REMIC are originated*
8 *by the United States or any State (or any political*
9 *subdivision, agency, or instrumentality of the United*
10 *States or any State) and are principally secured by*
11 *an interest in real property, then each obligation*
12 *transferred to, or purchased by, the REMIC shall be*
13 *treated as secured by an interest in real property.”.*

14 *(8)(A) Section 860G(a)(3)(A) is amended by*
15 *striking “or” at the end of clause (i), by inserting*
16 *“or” at the end of clause (ii), and by inserting after*
17 *clause (ii) the following new clause:*

18 *“(iii) represents an increase in the*
19 *principal amount under the original terms*
20 *of an obligation described in clause (i) or*
21 *(ii) if such increase—*

22 *“(I) is attributable to an advance*
23 *made to the obligor pursuant to the*
24 *original terms of the obligation,*

1 “(II) occurs after the startup day,
2 and

3 “(III) is purchased by the REMIC
4 pursuant to a fixed price contract in
5 effect on the startup day.”.

6 (B) Section 860G(a)(7)(B) is amended to read as
7 follows:

8 “(B) QUALIFIED RESERVE FUND.—For pur-
9 poses of subparagraph (A), the term ‘qualified
10 reserve fund’ means any reasonably required re-
11 serve to—

12 “(i) provide for full payment of ex-
13 penses of the REMIC or amounts due on
14 regular interests in the event of defaults on
15 qualified mortgages or lower than expected
16 returns on cash flow investments, or

17 “(ii) provide a source of funds for the
18 purchase of obligations described in clause
19 (ii) or (iii) of paragraph (3)(A).

20 The aggregate fair market value of the assets held
21 in any such reserve shall not exceed 50 percent
22 of the aggregate fair market value of all of the
23 assets of the REMIC on the startup day, and the
24 amount of any such reserve shall be promptly
25 and appropriately reduced to the extent the

1 *amount held in such reserve is no longer reason-*
2 *ably required for purposes specified in clause (i)*
3 *or (ii) of paragraph (3)(A).”.*

4 (9) *Subparagraph (C) of section 1202(e)(4) is*
5 *amended by striking “REMIC, or FASIT” and in-*
6 *serting “or REMIC”.*

7 (10) *Section 1272(a)(6)(B) is amended by add-*
8 *ing at the end the following new flush sentence:*

9 *“For purposes of clause (iii), the Secretary shall*
10 *prescribe regulations permitting the use of a cur-*
11 *rent prepayment assumption, determined as of*
12 *the close of the accrual period (or such other time*
13 *as the Secretary may prescribe during the tax-*
14 *able year in which the accrual period ends).”.*

15 (11) *Subparagraph (C) of section 7701(a)(19) is*
16 *amended by adding “and” at the end of clause (ix),*
17 *by striking “, and” at the end of clause (x) and in-*
18 *serting a period, and by striking clause (xi).*

19 (12) *The table of parts for subchapter M of chap-*
20 *ter 1 is amended by striking the item relating to part*
21 *V.*

22 (c) *EFFECTIVE DATE.—*

23 (1) *IN GENERAL.—Except as provided in para-*
24 *graph (2), the amendments made by this section shall*
25 *take effect on February 14, 2003.*

1 (2) *EXCEPTION FOR EXISTING FASITS.*—

2 (A) *IN GENERAL.*—Paragraph (1) shall not
3 apply to any FASIT in existence on the date of
4 the enactment of this Act to the extent that reg-
5 ular interests issued by the FASIT before such
6 date continue to remain outstanding in accord-
7 ance with the original terms of issuance.

8 (B) *TRANSFER OF ADDITIONAL ASSETS NOT*
9 *PERMITTED.*—Except as provided in regulations
10 prescribed by the Secretary of the Treasury or
11 the Secretary’s delegate, subparagraph (A) shall
12 cease to apply as of the earliest date after the
13 date of the enactment of this Act that any prop-
14 erty is transferred to the FASIT.

15 **SEC. 434. EXPANDED DISALLOWANCE OF DEDUCTION FOR**
16 **INTEREST ON CONVERTIBLE DEBT.**

17 (a) *IN GENERAL.*—Paragraph (2) of section 163(l) is
18 amended by striking “or a related party” and inserting “or
19 equity held by the issuer (or any related party) in any other
20 person”.

21 (b) *CAPITALIZATION ALLOWED WITH RESPECT TO EQ-*
22 *UITY OF PERSONS OTHER THAN ISSUER AND RELATED*
23 *PARTIES.*—Section 163(l) is amended by redesignating
24 paragraphs (4) and (5) as paragraphs (5) and (6) and by
25 inserting after paragraph (3) the following new paragraph:

1 “(4) *CAPITALIZATION ALLOWED WITH RESPECT*
2 *TO EQUITY OF PERSONS OTHER THAN ISSUER AND*
3 *RELATED PARTIES.*—*If the disqualified debt instru-*
4 *ment of a corporation is payable in equity held by the*
5 *issuer (or any related party) in any other person*
6 *(other than a related party), the basis of such equity*
7 *shall be increased by the amount not allowed as a de-*
8 *duction by reason of paragraph (1) with respect to*
9 *the instrument.”.*

10 (c) *EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED*
11 *BY DEALERS IN SECURITIES.*—*Section 163(l), as amended*
12 *by subsection (b), is amended by redesignating paragraphs*
13 *(5) and (6) as paragraphs (6) and (7) and by inserting*
14 *after paragraph (4) the following new paragraph:*

15 “(5) *EXCEPTION FOR CERTAIN INSTRUMENTS*
16 *ISSUED BY DEALERS IN SECURITIES.*—*For purposes*
17 *of this subsection, the term ‘disqualified debt instru-*
18 *ment’ does not include indebtedness issued by a dealer*
19 *in securities (or a related party) which is payable in,*
20 *or by reference to, equity (other than equity of the*
21 *issuer or a related party) held by such dealer in its*
22 *capacity as a dealer in securities. For purposes of*
23 *this paragraph, the term ‘dealer in securities’ has the*
24 *meaning given such term by section 475.”.*

1 (c) *CONFORMING AMENDMENTS.*—Paragraph (3) of
2 section 163(l) is amended—

3 (1) by striking “or a related party” in the mate-
4 rial preceding subparagraph (A) and inserting “or
5 any other person”, and

6 (2) by striking “or interest” each place it ap-
7 pears.

8 (d) *EFFECTIVE DATE.*—The amendments made by this
9 section shall apply to debt instruments issued after Feb-
10 ruary 13, 2003.

11 **SEC. 435. EXPANDED AUTHORITY TO DISALLOW TAX BENE-**
12 **FITS UNDER SECTION 269.**

13 (a) *IN GENERAL.*—Subsection (a) of section 269 (relat-
14 ing to acquisitions made to evade or avoid income tax) is
15 amended to read as follows:

16 “(a) *IN GENERAL.*—If—

17 “(1)(A) any person or persons acquire, directly
18 or indirectly, control of a corporation, or

19 “(B) any corporation acquires, directly or indi-
20 rectly, property of another corporation and the basis
21 of such property, in the hands of the acquiring cor-
22 poration, is determined by reference to the basis in
23 the hands of the transferor corporation, and

1 “(2) the principal purpose for which such acqui-
2 sition was made is evasion or avoidance of Federal
3 income tax,
4 then the Secretary may disallow such deduction, credit, or
5 other allowance. For purposes of paragraph (1)(A), control
6 means the ownership of stock possessing at least 50 percent
7 of the total combined voting power of all classes of stock
8 entitled to vote or at least 50 percent of the total value of
9 all shares of all classes of stock of the corporation.”.

10 (b) *EFFECTIVE DATE.*—The amendment made by this
11 section shall apply to stock and property acquired after
12 February 13, 2003.

13 **SEC. 436. MODIFICATION OF INTERACTION BETWEEN SUB-**
14 **PART F AND PASSIVE FOREIGN INVESTMENT**
15 **COMPANY RULES.**

16 (a) *LIMITATION ON EXCEPTION FROM PFIC RULES*
17 *FOR UNITED STATES SHAREHOLDERS OF CONTROLLED*
18 *FOREIGN CORPORATIONS.*—Paragraph (2) of section
19 1297(e) (relating to passive foreign investment company)
20 is amended by adding at the end the following flush sen-
21 tence:

22 “Such term shall not include any period if the
23 earning of subpart F income by such corporation
24 during such period would result in only a remote

1 *likelihood of an inclusion in gross income under*
2 *section 951(a)(1)(A)(i).”.*

3 **(b) EFFECTIVE DATE.**—*The amendment made by this*
4 *section shall apply to taxable years of controlled foreign cor-*
5 *porations beginning after February 13, 2003, and to tax-*
6 *able years of United States shareholders with or within*
7 *which such taxable years of controlled foreign corporations*
8 *end.*

9 ***Subtitle D—Provisions to***
10 ***Discourage Expatriation***

11 **SEC. 441. TAX TREATMENT OF INVERTED CORPORATE ENTI-**
12 ***TIES***

13 **(a) IN GENERAL.**—*Subchapter C of chapter 80 (relat-*
14 *ing to provisions affecting more than one subtitle) is*
15 *amended by adding at the end the following new section:*

16 **“SEC. 7874. RULES RELATING TO INVERTED CORPORATE**
17 ***ENTITIES***

18 **“(a) INVERTED CORPORATIONS TREATED AS DOMES-**
19 ***TIC CORPORATIONS.***—

20 **“(1) IN GENERAL.**—*If a foreign incorporated en-*
21 *tity is treated as an inverted domestic corporation,*
22 *then, notwithstanding section 7701(a)(4), such entity*
23 *shall be treated for purposes of this title as a domestic*
24 *corporation.*

1 “(C) *the expanded affiliated group which*
2 *after the acquisition includes the entity does not*
3 *have substantial business activities in the foreign*
4 *country in which or under the law of which the*
5 *entity is created or organized when compared to*
6 *the total business activities of such expanded af-*
7 *filiated group.*

8 *Except as provided in regulations, an acquisition of*
9 *properties of a domestic corporation shall not be*
10 *treated as described in subparagraph (A) if none of*
11 *the corporation’s stock was readily tradeable on an es-*
12 *tablished securities market at any time during the 4-*
13 *year period ending on the date of the acquisition.*

14 “(b) *PRESERVATION OF DOMESTIC TAX BASE IN CER-*
15 *TAIN INVERSION TRANSACTIONS TO WHICH SUBSECTION*
16 *(a) DOES NOT APPLY.—*

17 “(1) *IN GENERAL.—If a foreign incorporated en-*
18 *tity would be treated as an inverted domestic corpora-*
19 *tion with respect to an acquired entity if either—*

20 “(A) *subsection (a)(2)(A) were applied by*
21 *substituting ‘after December 31, 1996, and on or*
22 *before March 20, 2002’ for ‘after March 20, 2002’*
23 *and subsection (a)(2)(B) were applied by sub-*
24 *stituting ‘more than 50 percent’ for ‘at least 80*
25 *percent’, or*

1 “(B) subsection (a)(2)(B) were applied by
2 substituting ‘more than 50 percent’ for ‘at least
3 80 percent’,
4 then the rules of subsection (c) shall apply to any in-
5 version gain of the acquired entity during the appli-
6 cable period and the rules of subsection (d) shall
7 apply to any related party transaction of the ac-
8 quired entity during the applicable period. This sub-
9 section shall not apply for any taxable year if sub-
10 section (a) applies to such foreign incorporated entity
11 for such taxable year.

12 “(2) ACQUIRED ENTITY.—For purposes of this
13 section—

14 “(A) IN GENERAL.—The term ‘acquired en-
15 tity’ means the domestic corporation or partner-
16 ship substantially all of the properties of which
17 are directly or indirectly acquired in an acquisi-
18 tion described in subsection (a)(2)(A) to which
19 this subsection applies.

20 “(B) AGGREGATION RULES.—Any domestic
21 person bearing a relationship described in sec-
22 tion 267(b) or 707(b) to an acquired entity shall
23 be treated as an acquired entity with respect to
24 the acquisition described in subparagraph (A).

1 “(3) *APPLICABLE PERIOD.*—*For purposes of this*
2 *section—*

3 “(A) *IN GENERAL.*—*The term ‘applicable*
4 *period’ means the period—*

5 “(i) *beginning on the first date prop-*
6 *erties are acquired as part of the acquisi-*
7 *tion described in subsection (a)(2)(A) to*
8 *which this subsection applies, and*

9 “(ii) *ending on the date which is 10*
10 *years after the last date properties are ac-*
11 *quired as part of such acquisition.*

12 “(B) *SPECIAL RULE FOR INVERSIONS OC-*
13 *CURRING BEFORE MARCH 21, 2002.*—*In the case*
14 *of any acquired entity to which paragraph*
15 *(1)(A) applies, the applicable period shall be the*
16 *10-year period beginning on January 1, 2003.*

17 “(c) *TAX ON INVERSION GAINS MAY NOT BE OFF-*
18 *SET.*—*If subsection (b) applies—*

19 “(1) *IN GENERAL.*—*The taxable income of an ac-*
20 *quired entity (or any expanded affiliated group which*
21 *includes such entity) for any taxable year which in-*
22 *cludes any portion of the applicable period shall in*
23 *no event be less than the inversion gain of the entity*
24 *for the taxable year.*

1 “(2) *CREDITS NOT ALLOWED AGAINST TAX ON IN-*
2 *VERSION GAIN.—Credits shall be allowed against the*
3 *tax imposed by this chapter on an acquired entity for*
4 *any taxable year described in paragraph (1) only to*
5 *the extent such tax exceeds the product of—*

6 “(A) *the amount of the inversion gain for*
7 *the taxable year, and*

8 “(B) *the highest rate of tax specified in sec-*
9 *tion 11(b)(1).*

10 *For purposes of determining the credit allowed by sec-*
11 *tion 901 inversion gain shall be treated as from*
12 *sources within the United States.*

13 “(3) *SPECIAL RULES FOR PARTNERSHIPS.—In*
14 *the case of an acquired entity which is a*
15 *partnership—*

16 “(A) *the limitations of this subsection shall*
17 *apply at the partner rather than the partnership*
18 *level,*

19 “(B) *the inversion gain of any partner for*
20 *any taxable year shall be equal to the sum of—*

21 “(i) *the partner’s distributive share of*
22 *inversion gain of the partnership for such*
23 *taxable year, plus*

24 “(ii) *income or gain required to be rec-*
25 *ognized for the taxable year by the partner*

1 *under section 367(a), 741, or 1001, or*
2 *under any other provision of chapter 1, by*
3 *reason of the transfer during the applicable*
4 *period of any partnership interest of the*
5 *partner in such partnership to the foreign*
6 *incorporated entity, and*

7 *“(C) the highest rate of tax specified in the*
8 *rate schedule applicable to the partner under*
9 *chapter 1 shall be substituted for the rate of tax*
10 *under paragraph (2)(B).*

11 *“(4) INVERSION GAIN.—For purposes of this sec-*
12 *tion, the term ‘inversion gain’ means any income or*
13 *gain required to be recognized under section 304,*
14 *311(b), 367, 1001, or 1248, or under any other provi-*
15 *sion of chapter 1, by reason of the transfer during the*
16 *applicable period of stock or other properties by an*
17 *acquired entity—*

18 *“(A) as part of the acquisition described in*
19 *subsection (a)(2)(A) to which subsection (b) ap-*
20 *plies, or*

21 *“(B) after such acquisition to a foreign re-*
22 *lated person.*

23 *The Secretary may provide that income or gain from*
24 *the sale of inventories or other transactions in the or-*
25 *inary course of a trade or business shall not be treat-*

1 *ed as inversion gain under subparagraph (B) to the*
2 *extent the Secretary determines such treatment would*
3 *not be inconsistent with the purposes of this section.*

4 *“(5) COORDINATION WITH SECTION 172 AND MIN-*
5 *IMUM TAX.—Rules similar to the rules of paragraphs*
6 *(3) and (4) of section 860E(a) shall apply for pur-*
7 *poses of this section.*

8 *“(6) STATUTE OF LIMITATIONS.—*

9 *“(A) IN GENERAL.—The statutory period*
10 *for the assessment of any deficiency attributable*
11 *to the inversion gain of any taxpayer for any*
12 *pre-inversion year shall not expire before the ex-*
13 *piration of 3 years from the date the Secretary*
14 *is notified by the taxpayer (in such manner as*
15 *the Secretary may prescribe) of the acquisition*
16 *described in subsection (a)(2)(A) to which such*
17 *gain relates and such deficiency may be assessed*
18 *before the expiration of such 3-year period not-*
19 *withstanding the provisions of any other law or*
20 *rule of law which would otherwise prevent such*
21 *assessment.*

22 *“(B) PRE-INVERSION YEAR.—For purposes*
23 *of subparagraph (A), the term ‘pre-inversion*
24 *year’ means any taxable year if—*

1 “(i) any portion of the applicable pe-
2 riod is included in such taxable year, and

3 “(ii) such year ends before the taxable
4 year in which the acquisition described in
5 subsection (a)(2)(A) is completed.

6 “(d) *SPECIAL RULES APPLICABLE TO ACQUIRED EN-*
7 *TITIES TO WHICH SUBSECTION (B) APPLIES.—*

8 “(1) *INCREASES IN ACCURACY-RELATED PEN-*
9 *ALTIES.—In the case of any underpayment of tax of*
10 *an acquired entity to which subsection (b) applies—*

11 “(A) *section 6662(a) shall be applied with*
12 *respect to such underpayment by substituting ‘30*
13 *percent’ for ‘20 percent’, and*

14 “(B) *if such underpayment is attributable*
15 *to one or more gross valuation understatements,*
16 *the increase in the rate of penalty under section*
17 *6662(h) shall be to 50 percent rather than 40*
18 *percent.*

19 “(2) *MODIFICATIONS OF LIMITATION ON INTER-*
20 *EST DEDUCTION.—In the case of an acquired entity*
21 *to which subsection (b) applies, section 163(j) shall be*
22 *applied—*

23 “(A) *without regard to paragraph (2)(A)(ii)*
24 *thereof, and*

1 “(B) by substituting ‘25 percent’ for ‘50
2 percent’ each place it appears in paragraph
3 (2)(B) thereof.

4 “(e) *OTHER DEFINITIONS AND SPECIAL RULES.*—For
5 purposes of this section—

6 “(1) *RULES FOR APPLICATION OF SUBSECTION*
7 *(a)(2).*—In applying subsection (a)(2) for purposes of
8 subsections (a) and (b), the following rules shall
9 apply:

10 “(A) *CERTAIN STOCK DISREGARDED.*—
11 There shall not be taken into account in deter-
12 mining ownership for purposes of subsection
13 (a)(2)(B)—

14 “(i) stock held by members of the ex-
15 panded affiliated group which includes the
16 foreign incorporated entity, or

17 “(ii) stock of such entity which is sold
18 in a public offering or private placement re-
19 lated to the acquisition described in sub-
20 section (a)(2)(A).

21 “(B) *PLAN DEEMED IN CERTAIN CASES.*—If
22 a foreign incorporated entity acquires directly or
23 indirectly substantially all of the properties of a
24 domestic corporation or partnership during the
25 4-year period beginning on the date which is 2

1 *years before the ownership requirements of sub-*
2 *section (a)(2)(B) are met with respect to such do-*
3 *mestic corporation or partnership, such actions*
4 *shall be treated as pursuant to a plan.*

5 “(C) *CERTAIN TRANSFERS DISREGARDED.—*
6 *The transfer of properties or liabilities (includ-*
7 *ing by contribution or distribution) shall be dis-*
8 *regarded if such transfers are part of a plan a*
9 *principal purpose of which is to avoid the pur-*
10 *poses of this section.*

11 “(D) *SPECIAL RULE FOR RELATED PART-*
12 *NERSHIPS.—For purposes of applying subsection*
13 *(a)(2) to the acquisition of a domestic partner-*
14 *ship, except as provided in regulations, all part-*
15 *nerships which are under common control (with-*
16 *in the meaning of section 482) shall be treated*
17 *as 1 partnership.*

18 “(E) *TREATMENT OF CERTAIN RIGHTS.—*
19 *The Secretary shall prescribe such regulations as*
20 *may be necessary—*

21 “(i) *to treat warrants, options, con-*
22 *tracts to acquire stock, convertible debt in-*
23 *struments, and other similar interests as*
24 *stock, and*

25 “(ii) *to treat stock as not stock.*

1 “(2) *EXPANDED AFFILIATED GROUP.*—*The term*
2 *‘expanded affiliated group’ means an affiliated group*
3 *as defined in section 1504(a) but without regard to*
4 *section 1504(b)(3), except that section 1504(a) shall*
5 *be applied by substituting ‘more than 50 percent’ for*
6 *‘at least 80 percent’ each place it appears.*

7 “(3) *FOREIGN INCORPORATED ENTITY.*—*The*
8 *term ‘foreign incorporated entity’ means any entity*
9 *which is, or but for subsection (a)(1) would be, treated*
10 *as a foreign corporation for purposes of this title.*

11 “(4) *FOREIGN RELATED PERSON.*—*The term ‘for-*
12 *foreign related person’ means, with respect to any ac-*
13 *quired entity, a foreign person which—*

14 “(A) *bears a relationship to such entity de-*
15 *scribed in section 267(b) or 707(b), or*

16 “(B) *is under the same common control*
17 *(within the meaning of section 482) as such enti-*
18 *ty.*

19 “(5) *SUBSEQUENT ACQUISITIONS BY UNRELATED*
20 *DOMESTIC CORPORATIONS.*—

21 “(A) *IN GENERAL.*—*Subject to such condi-*
22 *tions, limitations, and exceptions as the Sec-*
23 *retary may prescribe, if, after an acquisition de-*
24 *scribed in subsection (a)(2)(A) to which sub-*
25 *section (b) applies, a domestic corporation stock*

1 *of which is traded on an established securities*
2 *market acquires directly or indirectly any prop-*
3 *erties of one or more acquired entities in a*
4 *transaction with respect to which the require-*
5 *ments of subparagraph (B) are met, this section*
6 *shall cease to apply to any such acquired entity*
7 *with respect to which such requirements are met.*

8 “(B) *REQUIREMENTS.*—*The requirements of*
9 *the subparagraph are met with respect to a*
10 *transaction involving any acquisition described*
11 *in subparagraph (A) if—*

12 “(i) *before such transaction the domes-*
13 *tic corporation did not have a relationship*
14 *described in section 267(b) or 707(b), and*
15 *was not under common control (within the*
16 *meaning of section 482), with the acquired*
17 *entity, or any member of an expanded af-*
18 *iliated group including such entity, and*

19 “(ii) *after such transaction, such ac-*
20 *quired entity—*

21 “(I) *is a member of the same ex-*
22 *panded affiliated group which includes*
23 *the domestic corporation or has such a*
24 *relationship or is under such common*

1 *control with any member of such*
2 *group, and*

3 “*(II) is not a member of, and does*
4 *not have such a relationship and is not*
5 *under such common control with any*
6 *member of, the expanded affiliated*
7 *group which before such acquisition in-*
8 *cluded such entity.*

9 “(f) *REGULATIONS.—The Secretary shall provide such*
10 *regulations as are necessary to carry out this section, in-*
11 *cluding regulations providing for such adjustments to the*
12 *application of this section as are necessary to prevent the*
13 *avoidance of the purposes of this section, including the*
14 *avoidance of such purposes through—*

15 “*(1) the use of related persons, pass-thru or other*
16 *noncorporate entities, or other intermediaries, or*

17 “*(2) transactions designed to have persons cease*
18 *to be (or not become) members of expanded affiliated*
19 *groups or related persons.”.*

20 “(b) *INFORMATION REPORTING.—The Secretary of the*
21 *Treasury shall exercise the Secretary’s authority under the*
22 *Internal Revenue Code of 1986 to require entities involved*
23 *in transactions to which section 7874 of such Code (as*
24 *added by subsection (a)) applies to report to the Secretary,*
25 *shareholders, partners, and such other persons as the Sec-*

1 *retary may prescribe such information as is necessary to*
2 *ensure the proper tax treatment of such transactions.*

3 (c) *CONFORMING AMENDMENT.—The table of sections*
4 *for subchapter C of chapter 80 is amended by adding at*
5 *the end the following new item:*

“Sec. 7874. Rules relating to inverted corporate entities.”.

6 (d) *TRANSITION RULE FOR CERTAIN REGULATED IN-*
7 *VESTMENT COMPANIES AND UNIT INVESTMENT TRUSTS.—*
8 *Notwithstanding section 7874 of the Internal Revenue Code*
9 *of 1986 (as added by subsection (a)), a regulated investment*
10 *company, or other pooled fund or trust specified by the Sec-*
11 *retary of the Treasury, may elect to recognize gain by rea-*
12 *son of section 367(a) of such Code with respect to a trans-*
13 *action under which a foreign incorporated entity is treated*
14 *as an inverted domestic corporation under section 7874(a)*
15 *of such Code by reason of an acquisition completed after*
16 *March 20, 2002, and before January 1, 2004.*

17 **SEC. 442. IMPOSITION OF MARK-TO-MARKET TAX ON INDI-**
18 **VIDUALS WHO EXPATRIATE.**

19 (a) *IN GENERAL.—Subpart A of part II of subchapter*
20 *N of chapter 1 is amended by inserting after section 877*
21 *the following new section:*

22 **“SEC. 877A. TAX RESPONSIBILITIES OF EXPATRIATION.**

23 *“(a) GENERAL RULES.—For purposes of this*
24 *subtitle—*

1 “(1) *MARK TO MARKET.*—*Except as provided in*
2 *subsections (d) and (f), all property of a covered expa-*
3 *triate to whom this section applies shall be treated as*
4 *sold on the day before the expatriation date for its*
5 *fair market value.*

6 “(2) *RECOGNITION OF GAIN OR LOSS.*—*In the*
7 *case of any sale under paragraph (1)—*

8 “(A) *notwithstanding any other provision of*
9 *this title, any gain arising from such sale shall*
10 *be taken into account for the taxable year of the*
11 *sale, and*

12 “(B) *any loss arising from such sale shall*
13 *be taken into account for the taxable year of the*
14 *sale to the extent otherwise provided by this title,*
15 *except that section 1091 shall not apply to any*
16 *such loss.*

17 *Proper adjustment shall be made in the amount of*
18 *any gain or loss subsequently realized for gain or loss*
19 *taken into account under the preceding sentence.*

20 “(3) *EXCLUSION FOR CERTAIN GAIN.*—

21 “(A) *IN GENERAL.*—*The amount which, but*
22 *for this paragraph, would be includible in the*
23 *gross income of any individual by reason of this*
24 *section shall be reduced (but not below zero) by*
25 *\$600,000. For purposes of this paragraph, allo-*

1 *cable expatriation gain taken into account under*
2 *subsection (f)(2) shall be treated in the same*
3 *manner as an amount required to be includible*
4 *in gross income.*

5 “(B) *COST-OF-LIVING ADJUSTMENT.*—

6 “(i) *IN GENERAL.*—*In the case of an*
7 *expatriation date occurring in any calendar*
8 *year after 2003, the \$600,000 amount under*
9 *subparagraph (A) shall be increased by an*
10 *amount equal to—*

11 “(I) *such dollar amount, multi-*
12 *plied by*

13 “(II) *the cost-of-living adjustment*
14 *determined under section 1(f)(3) for*
15 *such calendar year, determined by sub-*
16 *stituting ‘calendar year 2002’ for ‘cal-*
17 *endar year 1992’ in subparagraph (B)*
18 *thereof.*

19 “(ii) *ROUNDING RULES.*—*If any*
20 *amount after adjustment under clause (i) is*
21 *not a multiple of \$1,000, such amount shall*
22 *be rounded to the next lower multiple of*
23 *\$1,000.*

24 “(4) *ELECTION TO CONTINUE TO BE TAXED AS*
25 *UNITED STATES CITIZEN.*—

1 “(A) *IN GENERAL.*—If a covered expatriate
2 elects the application of this paragraph—

3 “(i) *this section (other than this para-*
4 *graph and subsection (i)) shall not apply to*
5 *the expatriate, but*

6 “(ii) *in the case of property to which*
7 *this section would apply but for such elec-*
8 *tion, the expatriate shall be subject to tax*
9 *under this title in the same manner as if*
10 *the individual were a United States citizen.*

11 “(B) *REQUIREMENTS.*—Subparagraph (A)
12 shall not apply to an individual unless the
13 individual—

14 “(i) *provides security for payment of*
15 *tax in such form and manner, and in such*
16 *amount, as the Secretary may require,*

17 “(ii) *consents to the waiver of any*
18 *right of the individual under any treaty of*
19 *the United States which would preclude as-*
20 *essment or collection of any tax which may*
21 *be imposed by reason of this paragraph,*
22 *and*

23 “(iii) *complies with such other require-*
24 *ments as the Secretary may prescribe.*

1 “(C) *ELECTION.*—*An election under sub-*
2 *paragraph (A) shall apply to all property to*
3 *which this section would apply but for the elec-*
4 *tion and, once made, shall be irrevocable. Such*
5 *election shall also apply to property the basis of*
6 *which is determined in whole or in part by ref-*
7 *erence to the property with respect to which the*
8 *election was made.*

9 “(b) *ELECTION TO DEFER TAX.*—

10 “(1) *IN GENERAL.*—*If the taxpayer elects the ap-*
11 *plication of this subsection with respect to any prop-*
12 *erty treated as sold by reason of subsection (a), the*
13 *payment of the additional tax attributable to such*
14 *property shall be postponed until the due date of the*
15 *return for the taxable year in which such property is*
16 *disposed of (or, in the case of property disposed of in*
17 *a transaction in which gain is not recognized in*
18 *whole or in part, until such other date as the Sec-*
19 *retary may prescribe).*

20 “(2) *DETERMINATION OF TAX WITH RESPECT TO*
21 *PROPERTY.*—*For purposes of paragraph (1), the addi-*
22 *tional tax attributable to any property is an amount*
23 *which bears the same ratio to the additional tax im-*
24 *posed by this chapter for the taxable year solely by*
25 *reason of subsection (a) as the gain taken into ac-*

1 *count under subsection (a) with respect to such prop-*
2 *erty bears to the total gain taken into account under*
3 *subsection (a) with respect to all property to which*
4 *subsection (a) applies.*

5 *“(3) TERMINATION OF POSTPONEMENT.—No tax*
6 *may be postponed under this subsection later than the*
7 *due date for the return of tax imposed by this chapter*
8 *for the taxable year which includes the date of death*
9 *of the expatriate (or, if earlier, the time that the secu-*
10 *rity provided with respect to the property fails to*
11 *meet the requirements of paragraph (4), unless the*
12 *taxpayer corrects such failure within the time speci-*
13 *fied by the Secretary).*

14 *“(4) SECURITY.—*

15 *“(A) IN GENERAL.—No election may be*
16 *made under paragraph (1) with respect to any*
17 *property unless adequate security is provided to*
18 *the Secretary with respect to such property.*

19 *“(B) ADEQUATE SECURITY.—For purposes*
20 *of subparagraph (A), security with respect to*
21 *any property shall be treated as adequate secu-*
22 *rity if—*

23 *“(i) it is a bond in an amount equal*
24 *to the deferred tax amount under paragraph*
25 *(2) for the property, or*

1 “(ii) the taxpayer otherwise establishes
2 to the satisfaction of the Secretary that the
3 security is adequate.

4 “(5) *WAIVER OF CERTAIN RIGHTS.*—No election
5 may be made under paragraph (1) unless the tax-
6 payer consents to the waiver of any right under any
7 treaty of the United States which would preclude as-
8 sessment or collection of any tax imposed by reason
9 of this section.

10 “(6) *ELECTIONS.*—An election under paragraph
11 (1) shall only apply to property described in the elec-
12 tion and, once made, is irrevocable. An election may
13 be made under paragraph (1) with respect to an in-
14 terest in a trust with respect to which gain is re-
15 quired to be recognized under subsection (f)(1).

16 “(7) *INTEREST.*—For purposes of section 6601—
17 “(A) the last date for the payment of tax
18 shall be determined without regard to the election
19 under this subsection, and

20 “(B) section 6621(a)(2) shall be applied by
21 substituting ‘5 percentage points’ for ‘3 percent-
22 age points’ in subparagraph (B) thereof.

23 “(c) *COVERED EXPATRIATE.*—For purposes of this
24 section—

1 “(1) *IN GENERAL.*—*Except as provided in para-*
2 *graph (2), the term ‘covered expatriate’ means an ex-*
3 *patriate.*

4 “(2) *EXCEPTIONS.*—*An individual shall not be*
5 *treated as a covered expatriate if—*

6 “(A) *the individual—*

7 “(i) *became at birth a citizen of the*
8 *United States and a citizen of another*
9 *country and, as of the expatriation date,*
10 *continues to be a citizen of, and is taxed as*
11 *a resident of, such other country, and*

12 “(ii) *has not been a resident of the*
13 *United States (as defined in section*
14 *7701(b)(1)(A)(ii)) during the 5 taxable*
15 *years ending with the taxable year during*
16 *which the expatriation date occurs, or*

17 “(B)(i) *the individual’s relinquishment of*
18 *United States citizenship occurs before such indi-*
19 *vidual attains age 18½, and*

20 “(ii) *the individual has been a resident of*
21 *the United States (as so defined) for not more*
22 *than 5 taxable years before the date of relin-*
23 *quishment.*

24 “(d) *EXEMPT PROPERTY; SPECIAL RULES FOR PEN-*
25 *SION PLANS.*—

1 “(1) *EXEMPT PROPERTY.*—*This section shall not*
2 *apply to the following:*

3 “(A) *UNITED STATES REAL PROPERTY IN-*
4 *TERESTS.*—*Any United States real property in-*
5 *terest (as defined in section 897(c)(1)), other*
6 *than stock of a United States real property hold-*
7 *ing corporation which does not, on the day before*
8 *the expatriation date, meet the requirements of*
9 *section 897(c)(2).*

10 “(B) *SPECIFIED PROPERTY.*—*Any property*
11 *or interest in property not described in subpara-*
12 *graph (A) which the Secretary specifies in regu-*
13 *lations.*

14 “(2) *SPECIAL RULES FOR CERTAIN RETIREMENT*
15 *PLANS.*—

16 “(A) *IN GENERAL.*—*If a covered expatriate*
17 *holds on the day before the expatriation date any*
18 *interest in a retirement plan to which this para-*
19 *graph applies—*

20 “(i) *such interest shall not be treated*
21 *as sold for purposes of subsection (a)(1), but*

22 “(ii) *an amount equal to the present*
23 *value of the expatriate’s nonforfeitable ac-*
24 *crued benefit shall be treated as having been*

1 *received by such individual on such date as*
2 *a distribution under the plan.*

3 “(B) *TREATMENT OF SUBSEQUENT DIS-*
4 *TRIBUTIONS.—In the case of any distribution on*
5 *or after the expatriation date to or on behalf of*
6 *the covered expatriate from a plan from which*
7 *the expatriate was treated as receiving a dis-*
8 *tribution under subparagraph (A), the amount*
9 *otherwise includible in gross income by reason of*
10 *the subsequent distribution shall be reduced by*
11 *the excess of the amount includible in gross in-*
12 *come under subparagraph (A) over any portion*
13 *of such amount to which this subparagraph pre-*
14 *viously applied.*

15 “(C) *TREATMENT OF SUBSEQUENT DIS-*
16 *TRIBUTIONS BY PLAN.—For purposes of this title,*
17 *a retirement plan to which this paragraph ap-*
18 *plies, and any person acting on the plan’s behalf,*
19 *shall treat any subsequent distribution described*
20 *in subparagraph (B) in the same manner as*
21 *such distribution would be treated without re-*
22 *gard to this paragraph.*

23 “(D) *APPLICABLE PLANS.—This paragraph*
24 *shall apply to—*

1 “(i) any qualified retirement plan (as
2 defined in section 4974(c)),

3 “(ii) an eligible deferred compensation
4 plan (as defined in section 457(b)) of an el-
5 igible employer described in section
6 457(e)(1)(A), and

7 “(iii) to the extent provided in regula-
8 tions, any foreign pension plan or similar
9 retirement arrangements or programs.

10 “(e) DEFINITIONS.—For purposes of this section—

11 “(1) EXPATRIATE.—The term ‘expatriate’
12 means—

13 “(A) any United States citizen who relin-
14 quishes citizenship, and

15 “(B) any long-term resident of the United
16 States who—

17 “(i) ceases to be a lawful permanent
18 resident of the United States (within the
19 meaning of section 7701(b)(6)), or

20 “(ii) commences to be treated as a resi-
21 dent of a foreign country under the provi-
22 sions of a tax treaty between the United
23 States and the foreign country and who
24 does not waive the benefits of such treaty

1 *applicable to residents of the foreign coun-*
2 *try.*

3 “(2) *EXPATRIATION DATE.*—*The term ‘expatria-*
4 *tion date’ means—*

5 “(A) *the date an individual relinquishes*
6 *United States citizenship, or*

7 “(B) *in the case of a long-term resident of*
8 *the United States, the date of the event described*
9 *in clause (i) or (ii) of paragraph (1)(B).*

10 “(3) *RELINQUISHMENT OF CITIZENSHIP.*—*A cit-*
11 *izen shall be treated as relinquishing United States*
12 *citizenship on the earliest of—*

13 “(A) *the date the individual renounces such*
14 *individual’s United States nationality before a*
15 *diplomatic or consular officer of the United*
16 *States pursuant to paragraph (5) of section*
17 *349(a) of the Immigration and Nationality Act*
18 *(8 U.S.C. 1481(a)(5)),*

19 “(B) *the date the individual furnishes to the*
20 *United States Department of State a signed*
21 *statement of voluntary relinquishment of United*
22 *States nationality confirming the performance of*
23 *an act of expatriation specified in paragraph*
24 *(1), (2), (3), or (4) of section 349(a) of the Im-*

1 *migration and Nationality Act (8 U.S.C.*
2 *1481(a)(1)–(4)),*

3 *“(C) the date the United States Department*
4 *of State issues to the individual a certificate of*
5 *loss of nationality, or*

6 *“(D) the date a court of the United States*
7 *cancels a naturalized citizen’s certificate of natu-*
8 *ralization.*

9 *Subparagraph (A) or (B) shall not apply to any in-*
10 *dividual unless the renunciation or voluntary relin-*
11 *quishment is subsequently approved by the issuance to*
12 *the individual of a certificate of loss of nationality by*
13 *the United States Department of State.*

14 *“(4) LONG-TERM RESIDENT.—The term ‘long-*
15 *term resident’ has the meaning given to such term by*
16 *section 877(e)(2).*

17 *“(f) SPECIAL RULES APPLICABLE TO BENEFICIARIES’*
18 *INTERESTS IN TRUST.—*

19 *“(1) IN GENERAL.—Except as provided in para-*
20 *graph (2), if an individual is determined under para-*
21 *graph (3) to hold an interest in a trust on the day*
22 *before the expatriation date—*

23 *“(A) the individual shall not be treated as*
24 *having sold such interest,*

1 “(B) such interest shall be treated as a sep-
2 arate share in the trust, and

3 “(C)(i) such separate share shall be treated
4 as a separate trust consisting of the assets allo-
5 cable to such share,

6 “(ii) the separate trust shall be treated as
7 having sold its assets on the day before the expa-
8 triation date for their fair market value and as
9 having distributed all of its assets to the indi-
10 vidual as of such time, and

11 “(iii) the individual shall be treated as hav-
12 ing recontributed the assets to the separate trust.

13 Subsection (a)(2) shall apply to any income, gain, or
14 loss of the individual arising from a distribution de-
15 scribed in subparagraph (C)(ii). In determining the
16 amount of such distribution, proper adjustments shall
17 be made for liabilities of the trust allocable to an in-
18 dividual’s share in the trust.

19 “(2) SPECIAL RULES FOR INTERESTS IN QUALI-
20 FIED TRUSTS.—

21 “(A) IN GENERAL.—If the trust interest de-
22 scribed in paragraph (1) is an interest in a
23 qualified trust—

24 “(i) paragraph (1) and subsection (a)
25 shall not apply, and

1 “(i) in addition to any other tax im-
2 posed by this title, there is hereby imposed
3 on each distribution with respect to such in-
4 terest a tax in the amount determined
5 under subparagraph (B).

6 “(B) AMOUNT OF TAX.—The amount of tax
7 under subparagraph (A)(i) shall be equal to the
8 lesser of—

9 “(i) the highest rate of tax imposed by
10 section 1(e) for the taxable year which in-
11 cludes the day before the expatriation date,
12 multiplied by the amount of the distribu-
13 tion, or

14 “(ii) the balance in the deferred tax ac-
15 count immediately before the distribution
16 determined without regard to any increases
17 under subparagraph (C)(i) after the 30th
18 day preceding the distribution.

19 “(C) DEFERRED TAX ACCOUNT.—For pur-
20 poses of subparagraph (B)(i)—

21 “(i) OPENING BALANCE.—The opening
22 balance in a deferred tax account with re-
23 spect to any trust interest is an amount
24 equal to the tax which would have been im-
25 posed on the allocable expatriation gain

1 *with respect to the trust interest if such*
2 *gain had been included in gross income*
3 *under subsection (a).*

4 “(ii) *INCREASE FOR INTEREST.—The*
5 *balance in the deferred tax account shall be*
6 *increased by the amount of interest deter-*
7 *mined (on the balance in the account at the*
8 *time the interest accrues), for periods after*
9 *the 90th day after the expatriation date, by*
10 *using the rates and method applicable*
11 *under section 6621 for underpayments of*
12 *tax for such periods, except that section*
13 *6621(a)(2) shall be applied by substituting*
14 *‘5 percentage points’ for ‘3 percentage*
15 *points’ in subparagraph (B) thereof.*

16 “(iii) *DECREASE FOR TAXES PRE-*
17 *VIOUSLY PAID.—The balance in the tax de-*
18 *ferred account shall be reduced—*

19 “(I) *by the amount of taxes im-*
20 *posed by subparagraph (A) on any dis-*
21 *tribution to the person holding the*
22 *trust interest, and*

23 “(II) *in the case of a person hold-*
24 *ing a nonvested interest, to the extent*
25 *provided in regulations, by the amount*

1 *of taxes imposed by subparagraph (A)*
2 *on distributions from the trust with re-*
3 *spect to nonvested interests not held by*
4 *such person.*

5 “(D) *ALLOCABLE EXPATRIATION GAIN.*—*For*
6 *purposes of this paragraph, the allocable expa-*
7 *triation gain with respect to any beneficiary’s*
8 *interest in a trust is the amount of gain which*
9 *would be allocable to such beneficiary’s vested*
10 *and nonvested interests in the trust if the bene-*
11 *ficiary held directly all assets allocable to such*
12 *interests.*

13 “(E) *TAX DEDUCTED AND WITHHELD.*—

14 “(i) *IN GENERAL.*—*The tax imposed by*
15 *subparagraph (A)(i) shall be deducted and*
16 *withheld by the trustees from the distribu-*
17 *tion to which it relates.*

18 “(ii) *EXCEPTION WHERE FAILURE TO*
19 *WAIVE TREATY RIGHTS.*—*If an amount may*
20 *not be deducted and withheld under clause*
21 *(i) by reason of the distributee failing to*
22 *waive any treaty right with respect to such*
23 *distribution—*

24 “(I) *the tax imposed by subpara-*
25 *graph (A)(i) shall be imposed on the*

1 *trust and each trustee shall be person-*
2 *ally liable for the amount of such tax,*
3 *and*

4 *“(II) any other beneficiary of the*
5 *trust shall be entitled to recover from*
6 *the distributee the amount of such tax*
7 *imposed on the other beneficiary.*

8 *“(F) DISPOSITION.—If a trust ceases to be*
9 *a qualified trust at any time, a covered expa-*
10 *triate disposes of an interest in a qualified trust,*
11 *or a covered expatriate holding an interest in a*
12 *qualified trust dies, then, in lieu of the tax im-*
13 *posed by subparagraph (A)(ii), there is hereby*
14 *imposed a tax equal to the lesser of—*

15 *“(i) the tax determined under para-*
16 *graph (1) as if the day before the expatria-*
17 *tion date were the date of such cessation,*
18 *disposition, or death, whichever is applica-*
19 *ble, or*

20 *“(ii) the balance in the tax deferred ac-*
21 *count immediately before such date.*

22 *Such tax shall be imposed on the trust and each*
23 *trustee shall be personally liable for the amount*
24 *of such tax and any other beneficiary of the trust*
25 *shall be entitled to recover from the covered expa-*

1 *triate or the estate the amount of such tax im-*
2 *posed on the other beneficiary.*

3 “(G) *DEFINITIONS AND SPECIAL RULES.—*
4 *For purposes of this paragraph—*

5 “(i) *QUALIFIED TRUST.—The term*
6 *‘qualified trust’ means a trust which is de-*
7 *scribed in section 7701(a)(30)(E).*

8 “(ii) *VESTED INTEREST.—The term*
9 *‘vested interest’ means any interest which,*
10 *as of the day before the expatriation date, is*
11 *vested in the beneficiary.*

12 “(iii) *NONVESTED INTEREST.—The*
13 *term ‘nonvested interest’ means, with re-*
14 *spect to any beneficiary, any interest in a*
15 *trust which is not a vested interest. Such*
16 *interest shall be determined by assuming the*
17 *maximum exercise of discretion in favor of*
18 *the beneficiary and the occurrence of all*
19 *contingencies in favor of the beneficiary.*

20 “(iv) *ADJUSTMENTS.—The Secretary*
21 *may provide for such adjustments to the*
22 *bases of assets in a trust or a deferred tax*
23 *account, and the timing of such adjust-*
24 *ments, in order to ensure that gain is taxed*
25 *only once.*

1 “(v) *COORDINATION WITH RETIREMENT*
2 *PLAN RULES.—This subsection shall not*
3 *apply to an interest in a trust which is*
4 *part of a retirement plan to which sub-*
5 *section (d)(2) applies.*

6 “(3) *DETERMINATION OF BENEFICIARIES’ INTER-*
7 *EST IN TRUST.—*

8 “(A) *DETERMINATIONS UNDER PARAGRAPH*
9 *(1).—For purposes of paragraph (1), a bene-*
10 *ficiary’s interest in a trust shall be based upon*
11 *all relevant facts and circumstances, including*
12 *the terms of the trust instrument and any letter*
13 *of wishes or similar document, historical pat-*
14 *terns of trust distributions, and the existence of*
15 *and functions performed by a trust protector or*
16 *any similar adviser.*

17 “(B) *OTHER DETERMINATIONS.—For pur-*
18 *poses of this section—*

19 “(i) *CONSTRUCTIVE OWNERSHIP.—If a*
20 *beneficiary of a trust is a corporation, part-*
21 *nership, trust, or estate, the shareholders,*
22 *partners, or beneficiaries shall be deemed to*
23 *be the trust beneficiaries for purposes of this*
24 *section.*

1 “(ii) *TAXPAYER RETURN POSITION.*—A
2 *taxpayer shall clearly indicate on its in-*
3 *come tax return—*

4 “(I) *the methodology used to de-*
5 *termine that taxpayer’s trust interest*
6 *under this section, and*

7 “(II) *if the taxpayer knows (or*
8 *has reason to know) that any other*
9 *beneficiary of such trust is using a dif-*
10 *ferent methodology to determine such*
11 *beneficiary’s trust interest under this*
12 *section.*

13 “(g) *TERMINATION OF DEFERRALS, ETC.*—*In the case*
14 *of any covered expatriate, notwithstanding any other provi-*
15 *sion of this title—*

16 “(1) *any period during which recognition of in-*
17 *come or gain is deferred shall terminate on the day*
18 *before the expatriation date, and*

19 “(2) *any extension of time for payment of tax*
20 *shall cease to apply on the day before the expatriation*
21 *date and the unpaid portion of such tax shall be due*
22 *and payable at the time and in the manner pre-*
23 *scribed by the Secretary.*

24 “(h) *IMPOSITION OF TENTATIVE TAX.*—

1 “(1) *IN GENERAL.*—*If an individual is required*
2 *to include any amount in gross income under sub-*
3 *section (a) for any taxable year, there is hereby im-*
4 *posed, immediately before the expatriation date, a tax*
5 *in an amount equal to the amount of tax which*
6 *would be imposed if the taxable year were a short tax-*
7 *able year ending on the expatriation date.*

8 “(2) *DUE DATE.*—*The due date for any tax im-*
9 *posed by paragraph (1) shall be the 90th day after the*
10 *expatriation date.*

11 “(3) *TREATMENT OF TAX.*—*Any tax paid under*
12 *paragraph (1) shall be treated as a payment of the*
13 *tax imposed by this chapter for the taxable year to*
14 *which subsection (a) applies.*

15 “(4) *DEFERRAL OF TAX.*—*The provisions of sub-*
16 *section (b) shall apply to the tax imposed by this sub-*
17 *section to the extent attributable to gain includible in*
18 *gross income by reason of this section.*

19 “(i) *SPECIAL LIENS FOR DEFERRED TAX AMOUNTS.*—

20 “(1) *IMPOSITION OF LIEN.*—

21 “(A) *IN GENERAL.*—*If a covered expatriate*
22 *makes an election under subsection (a)(4) or (b)*
23 *which results in the deferral of any tax imposed*
24 *by reason of subsection (a), the deferred amount*
25 *(including any interest, additional amount, ad-*

1 *dition to tax, assessable penalty, and costs at-*
2 *tributable to the deferred amount) shall be a lien*
3 *in favor of the United States on all property of*
4 *the expatriate located in the United States (with-*
5 *out regard to whether this section applies to the*
6 *property).*

7 “(B) *DEFERRED AMOUNT.*—*For purposes of*
8 *this subsection, the deferred amount is the*
9 *amount of the increase in the covered expatri-*
10 *ate’s income tax which, but for the election under*
11 *subsection (a)(4) or (b), would have occurred by*
12 *reason of this section for the taxable year includ-*
13 *ing the expatriation date.*

14 “(2) *PERIOD OF LIEN.*—*The lien imposed by this*
15 *subsection shall arise on the expatriation date and*
16 *continue until—*

17 “(A) *the liability for tax by reason of this*
18 *section is satisfied or has become unenforceable*
19 *by reason of lapse of time, or*

20 “(B) *it is established to the satisfaction of*
21 *the Secretary that no further tax liability may*
22 *arise by reason of this section.*

23 “(3) *CERTAIN RULES APPLY.*—*The rules set forth*
24 *in paragraphs (1), (3), and (4) of section 6324A(d)*
25 *shall apply with respect to the lien imposed by this*

1 *subsection as if it were a lien imposed by section*
2 *6324A.*

3 “(j) *REGULATIONS.—The Secretary shall prescribe*
4 *such regulations as may be necessary or appropriate to*
5 *carry out the purposes of this section.”.*

6 (b) *INCLUSION IN INCOME OF GIFTS AND BEQUESTS*
7 *RECEIVED BY UNITED STATES CITIZENS AND RESIDENTS*
8 *FROM EXPATRIATES.—Section 102 (relating to gifts, etc.*
9 *not included in gross income) is amended by adding at the*
10 *end the following new subsection:*

11 “(d) *GIFTS AND INHERITANCES FROM COVERED EX-*
12 *PATRIATES.—*

13 “(1) *IN GENERAL.—Subsection (a) shall not ex-*
14 *clude from gross income the value of any property ac-*
15 *quired by gift, bequest, devise, or inheritance from a*
16 *covered expatriate after the expatriation date. For*
17 *purposes of this subsection, any term used in this sub-*
18 *section which is also used in section 877A shall have*
19 *the same meaning as when used in section 877A.*

20 “(2) *EXCEPTIONS FOR TRANSFERS OTHERWISE*
21 *SUBJECT TO ESTATE OR GIFT TAX.—Paragraph (1)*
22 *shall not apply to any property if either—*

23 “(A) *the gift, bequest, devise, or inheritance*
24 *is—*

1 “(i) shown on a timely filed return of
2 tax imposed by chapter 12 as a taxable gift
3 by the covered expatriate, or

4 “(ii) included in the gross estate of the
5 covered expatriate for purposes of chapter
6 11 and shown on a timely filed return of
7 tax imposed by chapter 11 of the estate of
8 the covered expatriate, or

9 “(B) no such return was timely filed but no
10 such return would have been required to be filed
11 even if the covered expatriate were a citizen or
12 long-term resident of the United States.”.

13 (c) *DEFINITION OF TERMINATION OF UNITED STATES*
14 *CITIZENSHIP.*—Section 7701(a) is amended by adding at
15 the end the following new paragraph:

16 “(48) *TERMINATION OF UNITED STATES CITIZEN-*
17 *SHIP.*—

18 “(A) *IN GENERAL.*—An individual shall not
19 cease to be treated as a United States citizen be-
20 fore the date on which the individual’s citizen-
21 ship is treated as relinquished under section
22 877A(e)(3).

23 “(B) *DUAL CITIZENS.*—Under regulations
24 prescribed by the Secretary, subparagraph (A)
25 shall not apply to an individual who became at

1 *birth a citizen of the United States and a citizen*
2 *of another country.”.*

3 *(d) INELIGIBILITY FOR VISA OR ADMISSION TO*
4 *UNITED STATES.—*

5 *(1) IN GENERAL.—Section 212(a)(10)(E) of the*
6 *Immigration and Nationality Act (8 U.S.C.*
7 *1182(a)(10)(E)) is amended to read as follows:*

8 *“(E) FORMER CITIZENS NOT IN COMPLI-*
9 *ANCE WITH EXPATRIATION REVENUE PROVI-*
10 *SIONS.—Any alien who is a former citizen of the*
11 *United States who relinquishes United States*
12 *citizenship (within the meaning of section*
13 *877A(e)(3) of the Internal Revenue Code of 1986)*
14 *and who is not in compliance with section 877A*
15 *of such Code (relating to expatriation).”.*

16 *(2) AVAILABILITY OF INFORMATION.—*

17 *(A) IN GENERAL.—Section 6103(l) (relating*
18 *to disclosure of returns and return information*
19 *for purposes other than tax administration) is*
20 *amended by adding at the end the following new*
21 *paragraph:*

22 *“(19) DISCLOSURE TO DENY VISA OR ADMISSION*
23 *TO CERTAIN EXPATRIATES.—Upon written request of*
24 *the Attorney General or the Attorney General’s dele-*
25 *gate, the Secretary shall disclose whether an indi-*

1 *vidual is in compliance with section 877A (and if not*
2 *in compliance, any items of noncompliance) to offi-*
3 *cers and employees of the Federal agency responsible*
4 *for administering section 212(a)(10)(E) of the Immi-*
5 *gration and Nationality Act solely for the purpose of,*
6 *and to the extent necessary in, administering such*
7 *section 212(a)(10)(E).”.*

8 *(B) SAFEGUARDS.—*

9 *(i) TECHNICAL AMENDMENTS.—Para-*
10 *graph (4) of section 6103(p) of the Internal*
11 *Revenue Code of 1986, as amended by sec-*
12 *tion 202(b)(2)(B) of the Trade Act of 2002*
13 *(Public Law 107–210; 116 Stat. 961), is*
14 *amended by striking “or (17)” after “any*
15 *other person described in subsection (l)(16)”*
16 *each place it appears and inserting “or*
17 *(18)”.*

18 *(ii) CONFORMING AMENDMENTS.—Sec-*
19 *tion 6103(p)(4) (relating to safeguards), as*
20 *amended by clause (i), is amended by strik-*
21 *ing “or (18)” after “any other person de-*
22 *scribed in subsection (l)(16)” each place it*
23 *appears and inserting “(18), or (19)”.*

24 *(3) EFFECTIVE DATES.—*

1 (A) *IN GENERAL.*—*Except as provided in*
2 *subparagraph (B), the amendments made by this*
3 *subsection shall apply to individuals who relin-*
4 *quish United States citizenship on or after the*
5 *date of the enactment of this Act.*

6 (B) *TECHNICAL AMENDMENTS.*—*The*
7 *amendments made by paragraph (2)(B)(i) shall*
8 *take effect as if included in the amendments*
9 *made by section 202(b)(2)(B) of the Trade Act of*
10 *2002 (Public Law 107–210; 116 Stat. 961).*

11 (e) *CONFORMING AMENDMENTS.*—

12 (1) *Section 877 is amended by adding at the end*
13 *the following new subsection:*

14 “(g) *APPLICATION.*—*This section shall not apply to an*
15 *expatriate (as defined in section 877A(e)) whose expatria-*
16 *tion date (as so defined) occurs on or after February 5,*
17 *2003.”.*

18 (2) *Section 2107 is amended by adding at the*
19 *end the following new subsection:*

20 “(f) *APPLICATION.*—*This section shall not apply to*
21 *any expatriate subject to section 877A.”.*

22 (3) *Section 2501(a)(3) is amended by adding at*
23 *the end the following new subparagraph:*

1 “(F) *APPLICATION.*—*This paragraph shall*
2 *not apply to any expatriate subject to section*
3 *877A.*”.

4 (4)(A) *Paragraph (1) of section 6039G(d) is*
5 *amended by inserting “or 877A” after “section 877”.*

6 (B) *The second sentence of section 6039G(e) is*
7 *amended by inserting “or who relinquishes United*
8 *States citizenship (within the meaning of section*
9 *877A(e)(3))” after “877(a)”.*

10 (C) *Section 6039G(f) is amended by inserting*
11 *“or 877A(e)(2)(B)” after “877(e)(1)”.*

12 (f) *CLERICAL AMENDMENT.*—*The table of sections for*
13 *subpart A of part II of subchapter N of chapter 1 is amend-*
14 *ed by inserting after the item relating to section 877 the*
15 *following new item:*

 “*Sec. 877A. Tax responsibilities of expatriation.*”.

16 (g) *EFFECTIVE DATE.*—

17 (1) *IN GENERAL.*—*Except as provided in this*
18 *subsection, the amendments made by this section shall*
19 *apply to expatriates (within the meaning of section*
20 *877A(e) of the Internal Revenue Code of 1986, as*
21 *added by this section) whose expatriation date (as so*
22 *defined) occurs on or after February 5, 2003.*

23 (2) *GIFTS AND BEQUESTS.*—*Section 102(d) of*
24 *the Internal Revenue Code of 1986 (as added by sub-*
25 *section (b)) shall apply to gifts and bequests received*

1 *on or after February 5, 2003, from an individual or*
2 *the estate of an individual whose expatriation date*
3 *(as so defined) occurs after such date.*

4 (3) *DUE DATE FOR TENTATIVE TAX.—The due*
5 *date under section 877A(h)(2) of the Internal Revenue*
6 *Code of 1986, as added by this section, shall in no*
7 *event occur before the 90th day after the date of the*
8 *enactment of this Act.*

9 **SEC. 443. EXCISE TAX ON STOCK COMPENSATION OF INSID-**
10 **ERS IN INVERTED CORPORATIONS.**

11 (a) *IN GENERAL.—Subtitle D is amended by adding*
12 *at the end the following new chapter:*

13 **“CHAPTER 48—STOCK COMPENSATION OF**
14 **INSIDERS IN INVERTED CORPORATIONS**

“Sec. 5000A. Stock compensation of insiders in inverted corpora-
 tions entities.

15 **“SEC. 5000A. STOCK COMPENSATION OF INSIDERS IN IN-**
16 **VERTED CORPORATIONS.**

17 (a) *IMPOSITION OF TAX.—In the case of an indi-*
18 *vidual who is a disqualified individual with respect to any*
19 *inverted corporation, there is hereby imposed on such per-*
20 *son a tax equal to 20 percent of the value (determined under*
21 *subsection (b)) of the specified stock compensation held (di-*
22 *rectly or indirectly) by or for the benefit of such individual*
23 *or a member of such individual’s family (as defined in sec-*
24 *tion 267) at any time during the 12-month period begin-*

1 *ning on the date which is 6 months before the inversion*
2 *date.*

3 “(b) *VALUE.—For purposes of subsection (a)—*

4 “(1) *IN GENERAL.—The value of specified stock*
5 *compensation shall be—*

6 “(A) *in the case of a stock option (or other*
7 *similar right) or any stock appreciation right,*
8 *the fair value of such option or right, and*

9 “(B) *in any other case, the fair market*
10 *value of such compensation.*

11 “(2) *DATE FOR DETERMINING VALUE.—The de-*
12 *termination of value shall be made—*

13 “(A) *in the case of specified stock compensa-*
14 *tion held on the inversion date, on such date,*

15 “(B) *in the case of such compensation which*
16 *is canceled during the 6 months before the inver-*
17 *sion date, on the day before such cancellation,*
18 *and*

19 “(C) *in the case of such compensation which*
20 *is granted after the inversion date, on the date*
21 *such compensation is granted.*

22 “(c) *TAX TO APPLY ONLY IF SHAREHOLDER GAIN*
23 *RECOGNIZED.—Subsection (a) shall apply to any disquali-*
24 *fied individual with respect to an inverted corporation only*
25 *if gain (if any) on any stock in such corporation is recog-*

1 nized in whole or part by any shareholder by reason of the
2 acquisition referred to in section 7874(a)(2)(A) (determined
3 by substituting ‘July 10, 2002’ for ‘March 20, 2002’) with
4 respect to such corporation.

5 “(d) *EXCEPTION WHERE GAIN RECOGNIZED ON COM-*
6 *PENSATION.*—Subsection (a) shall not apply to—

7 “(1) any stock option which is exercised on the
8 inversion date or during the 6-month period before
9 such date and to the stock acquired in such exercise,
10 if income is recognized under section 83 on or before
11 the inversion date with respect to the stock acquired
12 pursuant to such exercise, and

13 “(2) any specified stock compensation which is
14 exercised, sold, exchanged, distributed, cashed out, or
15 otherwise paid during such period in a transaction in
16 which gain or loss is recognized in full.

17 “(e) *DEFINITIONS.*—For purposes of this section—

18 “(1) *DISQUALIFIED INDIVIDUAL.*—The term ‘dis-
19 qualified individual’ means, with respect to a cor-
20 poration, any individual who, at any time during the
21 12-month period beginning on the date which is 6
22 months before the inversion date—

23 “(A) is subject to the requirements of section
24 16(a) of the Securities Exchange Act of 1934
25 with respect to such corporation, or

1 “(B) would be subject to such requirements
2 if such corporation were an issuer of equity secu-
3 rities referred to in such section.

4 “(2) *INVERTED CORPORATION; INVERSION*
5 *DATE.*—

6 “(A) *INVERTED CORPORATION.*—The term
7 ‘inverted corporation’ means any corporation to
8 which subsection (a) or (b) of section 7874 ap-
9 plies determined—

10 “(i) by substituting ‘July 10, 2002’ for
11 ‘March 20, 2002’ in section 7874(a)(2)(A),
12 and

13 “(ii) without regard to subsection
14 (b)(1)(A).

15 Such term includes any predecessor or successor
16 of such a corporation.

17 “(B) *INVERSION DATE.*—The term ‘inver-
18 sion date’ means, with respect to a corporation,
19 the date on which the corporation first becomes
20 an inverted corporation.

21 “(3) *SPECIFIED STOCK COMPENSATION.*—

22 “(A) *IN GENERAL.*—The term ‘specified
23 stock compensation’ means payment (or right to
24 payment) granted by the inverted corporation
25 (or by any member of the expanded affiliated

1 *group which includes such corporation) to any*
2 *person in connection with the performance of*
3 *services by a disqualified individual for such cor-*
4 *poration or member if the value of such payment*
5 *or right is based on (or determined by reference*
6 *to) the value (or change in value) of stock in*
7 *such corporation (or any such member).*

8 “(B) *EXCEPTIONS.*—*Such term shall not*
9 *include—*

10 “(i) *any option to which part II of*
11 *subchapter D of chapter 1 applies, or*

12 “(ii) *any payment or right to payment*
13 *from a plan referred to in section*
14 *280G(b)(6).*

15 “(4) *EXPANDED AFFILIATED GROUP.*—*The term*
16 *‘expanded affiliated group’ means an affiliated group*
17 *(as defined in section 1504(a) without regard to sec-*
18 *tion 1504(b)(3)); except that section 1504(a) shall be*
19 *applied by substituting ‘more than 50 percent’ for ‘at*
20 *least 80 percent’ each place it appears.*

21 “(f) *SPECIAL RULES.*—*For purposes of this section—*

22 “(1) *CANCELLATION OF RESTRICTION.*—*The can-*
23 *cellation of a restriction which by its terms will never*
24 *lapse shall be treated as a grant.*

1 “(2) *PAYMENT OR REIMBURSEMENT OF TAX BY*
2 *CORPORATION TREATED AS SPECIFIED STOCK COM-*
3 *PENSATION.—Any payment of the tax imposed by this*
4 *section directly or indirectly by the inverted corpora-*
5 *tion or by any member of the expanded affiliated*
6 *group which includes such corporation—*

7 “(A) *shall be treated as specified stock com-*
8 *pensation, and*

9 “(B) *shall not be allowed as a deduction*
10 *under any provision of chapter 1.*

11 “(3) *CERTAIN RESTRICTIONS IGNORED.—Wheth-*
12 *er there is specified stock compensation, and the value*
13 *thereof, shall be determined without regard to any re-*
14 *striction other than a restriction which by its terms*
15 *will never lapse.*

16 “(4) *PROPERTY TRANSFERS.—Any transfer of*
17 *property shall be treated as a payment and any right*
18 *to a transfer of property shall be treated as a right*
19 *to a payment.*

20 “(5) *OTHER ADMINISTRATIVE PROVISIONS.—For*
21 *purposes of subtitle F, any tax imposed by this sec-*
22 *tion shall be treated as a tax imposed by subtitle A.*

23 “(g) *REGULATIONS.—The Secretary shall prescribe*
24 *such regulations as may be necessary or appropriate to*
25 *carry out the purposes of this section.”.*

1 **(b) DENIAL OF DEDUCTION.—**

2 **(1) IN GENERAL.—***Paragraph (6) of section*
3 *275(a) is amended by inserting “48,” after “46,”.*

4 **(2) \$1,000,000 LIMIT ON DEDUCTIBLE COMPENSA-**
5 **TION REDUCED BY PAYMENT OF EXCISE TAX ON SPEC-**
6 **IFIED STOCK COMPENSATION.—***Paragraph (4) of sec-*
7 *tion 162(m) is amended by adding at the end the fol-*
8 *lowing new subparagraph:*

9 **“(G) COORDINATION WITH EXCISE TAX ON**
10 **SPECIFIED STOCK COMPENSATION.—***The dollar*
11 *limitation contained in paragraph (1) with re-*
12 *spect to any covered employee shall be reduced*
13 *(but not below zero) by the amount of any pay-*
14 *ment (with respect to such employee) of the tax*
15 *imposed by section 5000A directly or indirectly*
16 *by the inverted corporation (as defined in such*
17 *section) or by any member of the expanded affili-*
18 *ated group (as defined in such section) which in-*
19 *cludes such corporation.”.*

20 **(c) CONFORMING AMENDMENTS.—**

21 **(1) The last sentence of section 3121(v)(2)(A) is**
22 *amended by inserting before the period “or to any*
23 *specified stock compensation (as defined in section*
24 *5000A) on which tax is imposed by section 5000A”.*

1 (2) *The table of chapters for subtitle D is amend-*
2 *ed by adding at the end the following new item:*

“Chapter 48. Stock compensation of insiders in inverted corpora-
tions.”.

3 (d) *EFFECTIVE DATE.—The amendments made by this*
4 *section shall take effect on July 11, 2002; except that periods*
5 *before such date shall not be taken into account in applying*
6 *the periods in subsections (a) and (e)(1) of section 5000A*
7 *of the Internal Revenue Code of 1986, as added by this sec-*
8 *tion.*

9 **SEC. 444. REINSURANCE OF UNITED STATES RISKS IN FOR-**
10 **EIGN JURISDICTIONS.**

11 (a) *IN GENERAL.—Section 845(a) (relating to alloca-*
12 *tion in case of reinsurance agreement involving tax avoid-*
13 *ance or evasion) is amended by striking “source and char-*
14 *acter” and inserting “amount, source, or character”.*

15 (b) *EFFECTIVE DATE.—The amendments made by this*
16 *section shall apply to any risk reinsured after April 11,*
17 *2002.*

18 **SEC. 445. REPORTING OF TAXABLE MERGERS AND ACQUI-**
19 **TIONS.**

20 (a) *IN GENERAL.—Subpart B of part III of subchapter*
21 *A of chapter 61 is amended by inserting after section 6043*
22 *the following new section:*

1 **“SEC. 6043A. TAXABLE MERGERS AND ACQUISITIONS.**

2 “(a) *IN GENERAL.*—*The acquiring corporation in any*
3 *taxable acquisition shall make a return (according to the*
4 *forms or regulations prescribed by the Secretary) setting*
5 *forth—*

6 “(1) *a description of the acquisition,*

7 “(2) *the name and address of each shareholder of*
8 *the acquired corporation who is required to recognize*
9 *gain (if any) as a result of the acquisition,*

10 “(3) *the amount of money and the fair market*
11 *value of other property transferred to each such share-*
12 *holder as part of such acquisition, and*

13 “(4) *such other information as the Secretary*
14 *may prescribe.*

15 *To the extent provided by the Secretary, the requirements*
16 *of this section applicable to the acquiring corporation shall*
17 *be applicable to the acquired corporation and not to the*
18 *acquiring corporation.*

19 “(b) *NOMINEE REPORTING.*—*Any person who holds*
20 *stock as a nominee for another person shall furnish in the*
21 *manner prescribed by the Secretary to such other person*
22 *the information provided by the corporation under sub-*
23 *section (d).*

24 “(c) *TAXABLE ACQUISITION.*—*For purposes of this sec-*
25 *tion, the term ‘taxable acquisition’ means any acquisition*
26 *by a corporation of stock in or property of another corpora-*

1 *tion if any shareholder of the acquired corporation is re-*
2 *quired to recognize gain (if any) as a result of such acquisi-*
3 *tion.*

4 “(d) *STATEMENTS TO BE FURNISHED TO SHARE-*
5 *HOLDERS.*—*Every person required to make a return under*
6 *subsection (a) shall furnish to each shareholder whose name*
7 *is required to be set forth in such return a written statement*
8 *showing—*

9 “(1) *the name, address, and phone number of the*
10 *information contact of the person required to make*
11 *such return,*

12 “(2) *the information required to be shown on*
13 *such return with respect to such shareholder, and*

14 “(3) *such other information as the Secretary*
15 *may prescribe.*

16 *The written statement required under the preceding sen-*
17 *tence shall be furnished to the shareholder on or before Jan-*
18 *uary 31 of the year following the calendar year during*
19 *which the taxable acquisition occurred.”.*

20 (b) *ASSESSABLE PENALTIES.*—

21 (1) *Subparagraph (B) of section 6724(d)(1) (re-*
22 *lating to definitions) is amended by redesignating*
23 *clauses (ii) through (xvii) as clauses (iii) through*
24 *(xviii), respectively, and by inserting after clause (i)*
25 *the following new clause:*

1 “(A) obligations of the United States,
2 money, or deposits with—

3 “(i) any bank (as defined by section
4 2(c) of the Bank Holding Company Act of
5 1956 (12 U.S.C. 1841(c)), without regard to
6 subparagraphs (C) and (G) of paragraph
7 (2) of such section), or

8 “(ii) any corporation not described in
9 clause (i) with respect to which a bank
10 holding company (as defined by section 2(a)
11 of such Act) or financial holding company
12 (as defined by section 2(p) of such Act)
13 owns directly or indirectly more than 80
14 percent by vote or value of the stock of such
15 corporation;”.

16 (b) *EFFECTIVE DATE.*—The amendment made by this
17 section shall take effect on the date of the enactment of this
18 Act.

19 **SEC. 452. PROHIBITION ON NONRECOGNITION OF GAIN**
20 **THROUGH COMPLETE LIQUIDATION OF**
21 **HOLDING COMPANY.**

22 (a) *IN GENERAL.*—Section 332 is amended by adding
23 at the end the following new subsection:

24 “(d) *RECOGNITION OF GAIN ON LIQUIDATION OF CER-*
25 *TAIN HOLDING COMPANIES.*—

1 “(1) *IN GENERAL.*—*In the case of any distribu-*
2 *tion to a foreign corporation in complete liquidation*
3 *of an applicable holding company—*

4 “(A) *subsection (a) and section 331 shall*
5 *not apply to such distribution, and*

6 “(B) *such distribution shall be treated as a*
7 *distribution to which section 301 applies.*

8 “(2) *APPLICABLE HOLDING COMPANY.*—*For pur-*
9 *poses of this subsection—*

10 “(A) *IN GENERAL.*—*The term ‘applicable*
11 *holding company’ means any domestic*
12 *corporation—*

13 “(i) *which is a common parent of an*
14 *affiliated group,*

15 “(ii) *stock of which is directly owned*
16 *by the distributee foreign corporation,*

17 “(iii) *substantially all of the assets of*
18 *which consist of stock in other members of*
19 *such affiliated group, and*

20 “(iv) *which has not been in existence*
21 *at all times during the 5 years immediately*
22 *preceding the date of the liquidation.*

23 “(B) *AFFILIATED GROUP.*—*For purposes of*
24 *this subsection, the term ‘affiliated group’ has the*
25 *meaning given such term by section 1504(a)*

1 *(without regard to paragraphs (2) and (4) of sec-*
2 *tion 1504(b)).*

3 “(3) *COORDINATION WITH SUBPART F.—If the*
4 *distributee of a distribution described in paragraph*
5 *(1) is a controlled foreign corporation (as defined in*
6 *section 957), then notwithstanding paragraph (1) or*
7 *subsection (a), such distribution shall be treated as a*
8 *distribution to which section 331 applies.*

9 “(4) *REGULATIONS.—The Secretary shall pro-*
10 *vide such regulations as appropriate to prevent the*
11 *abuse of this subsection, including regulations which*
12 *provide, for the purposes of clause (iv) of paragraph*
13 *(2)(A), that a corporation is not in existence for any*
14 *period unless it is engaged in the active conduct of a*
15 *trade or business or owns a significant ownership in-*
16 *terest in another corporation so engaged.”.*

17 “(b) *EFFECTIVE DATE.—The amendment made by this*
18 *section shall apply to distributions in complete liquidation*
19 *occurring on or after the date of the enactment of this Act.*

20 **SEC. 453. PREVENTION OF MISMATCHING OF INTEREST**
21 **AND ORIGINAL ISSUE DISCOUNT DEDUC-**
22 **TIONS AND INCOME INCLUSIONS IN TRANS-**
23 **ACTIONS WITH RELATED FOREIGN PERSONS.**

24 “(a) *ORIGINAL ISSUE DISCOUNT.—Section 163(e)(3)*
25 *(relating to special rule for original issue discount on obli-*

1 *gation held by related foreign person) is amended by redес-*
2 *ignating subparagraph (B) as subparagraph (C) and by in-*
3 *serting after subparagraph (A) the following new subpara-*
4 *graph:*

5 “(B) *SPECIAL RULE FOR CERTAIN FOREIGN*
6 *ENTITIES.—*

7 “(i) *IN GENERAL.—In the case of any*
8 *debt instrument having original issue dis-*
9 *count which is held by a related foreign per-*
10 *son which is a foreign personal holding*
11 *company (as defined in section 552), a con-*
12 *trolled foreign corporation (as defined in*
13 *section 957), or a passive foreign investment*
14 *company (as defined in section 1297), a de-*
15 *duction shall be allowable to the issuer with*
16 *respect to such original issue discount for*
17 *any taxable year before the taxable year in*
18 *which paid only to the extent such original*
19 *issue discount is included during such prior*
20 *taxable year in the gross income of a United*
21 *States person who owns (within the mean-*
22 *ing of section 958(a)) stock in such corpora-*
23 *tion.*

24 “(ii) *SECRETARIAL AUTHORITY.—The*
25 *Secretary may by regulation exempt trans-*

1 actions from the application of clause (i),
2 including any transaction which is entered
3 into by a payor in the ordinary course of
4 a trade or business in which the payor is
5 predominantly engaged.”.

6 (b) *INTEREST AND OTHER DEDUCTIBLE AMOUNTS.*—

7 Section 267(a)(3) is amended—

8 (1) by striking “The Secretary” and inserting:

9 “(A) *IN GENERAL.*—The Secretary”, and

10 (2) by adding at the end the following new sub-
11 paragraph:

12 “(B) *SPECIAL RULE FOR CERTAIN FOREIGN*
13 *ENTITIES.*—

14 “(i) *IN GENERAL.*—Notwithstanding
15 subparagraph (A), in the case of any
16 amount payable to a foreign personal hold-
17 ing company (as defined in section 552), a
18 controlled foreign corporation (as defined in
19 section 957), or a passive foreign investment
20 company (as defined in section 1297), a de-
21 duction shall be allowable to the payor with
22 respect to such amount for any taxable year
23 before the taxable year in which paid only
24 to the extent such amount is included dur-
25 ing such prior taxable year in the gross in-

1 *come of a United States person who owns*
2 *(within the meaning of section 958(a)) stock*
3 *in such corporation.*

4 “(i) *SECRETARIAL AUTHORITY.—The*
5 *Secretary may by regulation exempt trans-*
6 *actions from the application of clause (i),*
7 *including any transaction which is entered*
8 *into by a payor in the ordinary course of*
9 *a trade or business in which the payor is*
10 *predominantly engaged and in which the*
11 *payment of the accrued amounts occurs*
12 *within 8½ months after accrual or within*
13 *such other period as the Secretary may pre-*
14 *scribe.”.*

15 (c) *EFFECTIVE DATE.—The amendments made by this*
16 *section shall apply to payments accrued on or after the date*
17 *of the enactment of this Act.*

18 **SEC. 454. EFFECTIVELY CONNECTED INCOME TO INCLUDE**
19 **CERTAIN FOREIGN SOURCE INCOME.**

20 (a) *IN GENERAL.—Section 864(c)(4)(B) (relating to*
21 *treatment of income from sources without the United States*
22 *as effectively connected income) is amended by adding at*
23 *the end the following new flush sentence:*

24 “*Any income or gain which is equivalent to any*
25 *item of income or gain described in clause (i),*

1 (ii), or (iii) shall be treated in the same manner
2 as such item for purposes of this subparagraph.”.

3 (b) *EFFECTIVE DATE.*—The amendment made by this
4 section shall apply to taxable years beginning after the date
5 of the enactment of this Act.

6 **SEC. 455. RECAPTURE OF OVERALL FOREIGN LOSSES ON**
7 **SALE OF CONTROLLED FOREIGN CORPORA-**
8 **TION.**

9 (a) *IN GENERAL.*—Section 904(f)(3) (relating to dis-
10 positions) is amending by adding at the end the following
11 new subparagraph:

12 “(D) *APPLICATION TO DISPOSITIONS OF*
13 *STOCK IN CONTROLLED FOREIGN CORPORA-*
14 *TIONS.*—In the case of any disposition by a tax-
15 payer of any share of stock in a controlled for-
16 eign corporation (as defined in section 957), this
17 paragraph shall apply to such disposition in the
18 same manner as if it were a disposition of prop-
19 erty described in subparagraph (A), except that
20 the exception contained in subparagraph (C)(i)
21 shall not apply.”.

22 (b) *EFFECTIVE DATE.*—The amendment made by this
23 section shall apply to dispositions after the date of the en-
24 actment of this Act.

1 **SEC. 456. MINIMUM HOLDING PERIOD FOR FOREIGN TAX**
2 **CREDIT ON WITHHOLDING TAXES ON INCOME**
3 **OTHER THAN DIVIDENDS.**

4 (a) *IN GENERAL.*—Section 901 is amended by redesignig-
5 nating subsection (l) as subsection (m) and by inserting
6 after subsection (k) the following new subsection:

7 “(l) *MINIMUM HOLDING PERIOD FOR WITHHOLDING*
8 *TAXES ON GAIN AND INCOME OTHER THAN DIVIDENDS*
9 *ETC.*—

10 “(1) *IN GENERAL.*—In no event shall a credit be
11 allowed under subsection (a) for any withholding tax
12 (as defined in subsection (k)) on any item of income
13 or gain with respect to any property if—

14 “(A) such property is held by the recipient
15 of the item for 15 days or less during the 30-day
16 period beginning on the date which is 15 days
17 before the date on which the right to receive pay-
18 ment of such item arises, or

19 “(B) to the extent that the recipient of the
20 item is under an obligation (whether pursuant to
21 a short sale or otherwise) to make related pay-
22 ments with respect to positions in substantially
23 similar or related property.

24 This paragraph shall not apply to any dividend to
25 which subsection (k) applies.

1 “(2) *EXCEPTION FOR TAXES PAID BY DEAL-*
2 *ERS.—*

3 “(A) *IN GENERAL.—Paragraph (1) shall*
4 *not apply to any qualified tax with respect to*
5 *any property held in the active conduct in a for-*
6 *ign country of a business as a dealer in such*
7 *property.*

8 “(B) *QUALIFIED TAX.—For purposes of sub-*
9 *paragraph (A), the term ‘qualified tax’ means a*
10 *tax paid to a foreign country (other than the for-*
11 *ign country referred to in subparagraph (A))*
12 *if—*

13 “(i) *the item to which such tax is at-*
14 *tributable is subject to taxation on a net*
15 *basis by the country referred to in subpara-*
16 *graph (A), and*

17 “(ii) *such country allows a credit*
18 *against its net basis tax for the full amount*
19 *of the tax paid to such other foreign coun-*
20 *try.*

21 “(C) *DEALER.—For purposes of subpara-*
22 *graph (A), the term ‘dealer’ means—*

23 “(i) *with respect to a security, any*
24 *person to whom paragraphs (1) and (2) of*
25 *subsection (k) would not apply by reason of*

1 paragraph (4) thereof if such security were
2 stock, and

3 “(ii) with respect to any other prop-
4 erty, any person with respect to whom such
5 property is described in section 1221(a)(1).

6 “(D) REGULATIONS.—The Secretary may
7 prescribe such regulations as may be appropriate
8 to carry out this paragraph, including regula-
9 tions to prevent the abuse of the exception pro-
10 vided by this paragraph and to treat other taxes
11 as qualified taxes.

12 “(3) EXCEPTIONS.—The Secretary may by regu-
13 lation provide that paragraph (1) shall not apply to
14 property where the Secretary determines that the ap-
15 plication of paragraph (1) to such property is not
16 necessary to carry out the purposes of this subsection.

17 “(4) CERTAIN RULES TO APPLY.—Rules similar
18 to the rules of paragraphs (5), (6), and (7) of sub-
19 section (k) shall apply for purposes of this subsection.

20 “(5) DETERMINATION OF HOLDING PERIOD.—
21 Holding periods shall be determined for purposes of
22 this subsection without regard to section 1235 or any
23 similar rule.”.

1 (b) *CONFORMING AMENDMENT.*—*The heading of sub-*
2 *section (k) of section 901 is amended by inserting “ON DIVI-*
3 *DENDS” after “TAXES”.*

4 (c) *EFFECTIVE DATE.*—*The amendments made by this*
5 *section shall apply to amounts paid or accrued more than*
6 *30 days after the date of the enactment of this Act.*

7 ***Subtitle F—Other Revenue***
8 ***Provisions***

9 ***PART I—FINANCIAL INSTRUMENTS***

10 ***SEC. 461. TREATMENT OF STRIPPED INTERESTS IN BOND***
11 ***AND PREFERRED STOCK FUNDS, ETC.***

12 (a) *IN GENERAL.*—*Section 1286 (relating to tax treat-*
13 *ment of stripped bonds) is amended by redesignating sub-*
14 *section (f) as subsection (g) and by inserting after sub-*
15 *section (e) the following new subsection:*

16 “*(f) TREATMENT OF STRIPPED INTERESTS IN BOND*
17 *AND PREFERRED STOCK FUNDS, ETC.*—*In the case of an*
18 *account or entity substantially all of the assets of which*
19 *consist of bonds, preferred stock, or a combination thereof,*
20 *the Secretary may by regulations provide that rules similar*
21 *to the rules of this section and 305(e), as appropriate, shall*
22 *apply to interests in such account or entity to which (but*
23 *for this subsection) this section or section 305(e), as the case*
24 *may be, would not apply.”.*

1 (b) *CROSS REFERENCE.*—*Subsection (e) of section 305*
2 *is amended by adding at the end the following new para-*
3 *graph:*

4 “(7) *CROSS REFERENCE.*—

**“For treatment of stripped interests in certain ac-
counts or entities holding preferred stock, see section
1286(f).”.**

5 (c) *EFFECTIVE DATE.*—*The amendments made by this*
6 *section shall apply to purchases and dispositions after the*
7 *date of the enactment of this Act.*

8 **SEC. 462. APPLICATION OF EARNINGS STRIPPING RULES TO**
9 **PARTNERSHIPS AND S CORPORATIONS.**

10 (a) *IN GENERAL.*—*Section 168(j) (relating to limita-*
11 *tion on deduction for interest on certain indebtedness) is*
12 *amended by redesignating paragraph (8) as paragraph (9)*
13 *and by inserting after paragraph (7) the following new*
14 *paragraph:*

15 “(8) *APPLICATION TO PARTNERSHIPS AND S COR-*
16 *PORATIONS.*—

17 “(A) *IN GENERAL.*—*This subsection shall*
18 *apply to partnerships and S corporations in the*
19 *same manner as it applies to C corporations.*

20 “(B) *ALLOCATIONS TO CERTAIN CORPORATE*
21 *PARTNERS.*—*If a C corporation is a partner in*
22 *a partnership—*

23 “(i) *the corporation’s allocable share of*
24 *indebtedness and interest income of the*

1 *partnership shall be taken into account in*
2 *applying this subsection to the corporation,*
3 *and*

4 “(i) if a deduction is not disallowed
5 under this subsection with respect to any
6 interest expense of the partnership, this sub-
7 section shall be applied separately in deter-
8 mining whether a deduction is allowable to
9 the corporation with respect to the corpora-
10 tion’s allocable share of such interest ex-
11 pense.”.

12 (b) *EFFECTIVE DATE.*—*The amendments made by this*
13 *section shall apply to taxable years beginning after the date*
14 *of the enactment of this Act.*

15 **SEC. 463. RECOGNITION OF CANCELLATION OF INDEBTED-**
16 **NESS INCOME REALIZED ON SATISFACTION**
17 **OF DEBT WITH PARTNERSHIP INTEREST.**

18 (a) *IN GENERAL.*—*Paragraph (8) of section 108(e) (re-*
19 *lating to general rules for discharge of indebtedness (includ-*
20 *ing discharges not in title 11 cases or insolvency)) is*
21 *amended to read as follows:*

22 “(8) *INDEBTEDNESS SATISFIED BY CORPORATE*
23 *STOCK OR PARTNERSHIP INTEREST.*—*For purposes of*
24 *determining income of a debtor from discharge of in-*
25 *debtedness, if—*

1 “(A) a debtor corporation transfers stock, or
2 “(B) a debtor partnership transfers a cap-
3 ital or profits interest in such partnership,
4 to a creditor in satisfaction of its recourse or non-
5 recourse indebtedness, such corporation or partnership
6 shall be treated as having satisfied the indebtedness
7 with an amount of money equal to the fair market
8 value of the stock or interest. In the case of any part-
9 nership, any discharge of indebtedness income recog-
10 nized under this paragraph shall be included in the
11 distributive shares of taxpayers which were the part-
12 ners in the partnership immediately before such dis-
13 charge.”.

14 (b) *EFFECTIVE DATE.*—The amendment made by this
15 section shall apply with respect to cancellations of indebted-
16 ness occurring on or after the date of the enactment of this
17 Act.

18 **SEC. 464. MODIFICATION OF STRADDLE RULES.**

19 (a) *RULES RELATING TO IDENTIFIED STRADDLES.*—

20 (1) *IN GENERAL.*—Subparagraph (A) of section
21 1092(a)(2) (relating to special rule for identified
22 straddles) is amended to read as follows:

23 “(A) *IN GENERAL.*—In the case of any
24 straddle which is an identified straddle—

1 “(i) paragraph (1) shall not apply
2 with respect to identified positions com-
3 prising the identified straddle,

4 “(ii) if there is any loss with respect to
5 any identified position of the identified
6 straddle, the basis of each of the identified
7 offsetting positions in the identified straddle
8 shall be increased by an amount which
9 bears the same ratio to the loss as the unrec-
10 ognized gain with respect to such offsetting
11 position bears to the aggregate unrecognized
12 gain with respect to all such offsetting posi-
13 tions, and

14 “(iii) any loss described in clause (ii)
15 shall not otherwise be taken into account for
16 purposes of this title.”.

17 (2) *IDENTIFIED STRADDLE*.—Section
18 1092(a)(2)(B) (defining identified straddle) is
19 amended—

20 (A) by striking clause (ii) and inserting the
21 following:

22 “(ii) to the extent provided by regula-
23 tions, the value of each position of which (in
24 the hands of the taxpayer immediately be-
25 fore the creation of the straddle) is not less

1 *than the basis of such position in the hands*
2 *of the taxpayer at the time the straddle is*
3 *created, and”, and*

4 *(B) by adding at the end the following new*
5 *flush sentence:*

6 *“The Secretary shall prescribe regulations which*
7 *specify the proper methods for clearly identifying*
8 *a straddle as an identified straddle (and the po-*
9 *sitions comprising such straddle), which specify*
10 *the rules for the application of this section for a*
11 *taxpayer which fails to properly identify the po-*
12 *sitions of an identified straddle, and which*
13 *specify the ordering rules in cases where a tax-*
14 *payer disposes of less than an entire position*
15 *which is part of an identified straddle.”.*

16 (3) *UNRECOGNIZED GAIN.—Section 1092(a)(3)*
17 *(defining unrecognized gain) is amended by redesign-*
18 *ating subparagraph (B) as subparagraph (C) and*
19 *by inserting after subparagraph (A) the following new*
20 *subparagraph:*

21 *“(B) SPECIAL RULE FOR IDENTIFIED*
22 *STRADDLES.—For purposes of paragraph*
23 *(2)(A)(i), the unrecognized gain with respect to*
24 *any identified offsetting position shall be the ex-*
25 *cess of the fair market value of the position at*

1 *the time of the determination over the fair mar-*
2 *ket value of the position at the time the taxpayer*
3 *identified the position as a position in an identi-*
4 *fied straddle.”*

5 (4) *CONFORMING AMENDMENT.—Section*
6 *1092(c)(2) is amended by striking subparagraph (B)*
7 *and by redesignating subparagraph (C) as subpara-*
8 *graph (B).*

9 (b) *PHYSICALLY SETTLED POSITIONS.—Section*
10 *1092(d) (relating to definitions and special rules) is amend-*
11 *ed by adding at the end the following new paragraph:*

12 “(8) *SPECIAL RULES FOR PHYSICALLY SETTLED*
13 *POSITIONS.—For purposes of subsection (a), if a tax-*
14 *payer settles a position which is part of a straddle by*
15 *delivering property to which the position relates (and*
16 *such position, if terminated, would result in a real-*
17 *ization of a loss), then such taxpayer shall be treated*
18 *as if such taxpayer—*

19 “(A) *terminated the position for its fair*
20 *market value immediately before the settlement,*
21 *and*

22 “(B) *sold the property so delivered by the*
23 *taxpayer at its fair market value.”.*

24 (c) *REPEAL OF STOCK EXCEPTION.—*

1 (1) *IN GENERAL.*—Section 1092(d)(3) is re-
2 pealed.

3 (2) *CONFORMING AMENDMENT.*—Section
4 1258(d)(1) is amended by striking “; except that the
5 term ‘personal property’ shall include stock”.

6 (d) *REPEAL OF QUALIFIED COVERED CALL EXCEP-*
7 *TION.*—Section 1092(c)(4) is amended by adding at the end
8 the following new subparagraph:

9 “(I) *TERMINATION.*—This paragraph shall
10 not apply to any position established on or after
11 the date of the enactment of this subparagraph.”.

12 (e) *EFFECTIVE DATE.*—The amendments made by this
13 section shall apply to positions established on or after the
14 date of the enactment of this Act.

15 **SEC. 465. DENIAL OF INSTALLMENT SALE TREATMENT FOR**
16 **ALL READILY TRADEABLE DEBT.**

17 (a) *IN GENERAL.*—Section 453(f)(4)(B) (relating to
18 purchaser evidences of indebtedness payable on demand or
19 readily tradeable) is amended by striking “is issued by a
20 corporation or a government or political subdivision thereof
21 and”.

22 (b) *EFFECTIVE DATE.*—The amendment made by this
23 section shall apply to sales occurring on or after the date
24 of the enactment of this Act.

1 **PART II—CORPORATIONS AND PARTNERSHIPS**

2 **SEC. 466. MODIFICATION OF TREATMENT OF TRANSFERS**

3 **TO CREDITORS IN DIVISIVE REORGANIZA-**

4 **TIONS.**

5 (a) *IN GENERAL.*—Section 361(b)(3) (relating to treat-
6 ment of transfers to creditors) is amended by adding at the
7 end the following new sentence: “In the case of a reorganiza-
8 tion described in section 368(a)(1)(D) with respect to which
9 stock or securities of the corporation to which the assets are
10 transferred are distributed in a transaction which qualifies
11 under section 355, this paragraph shall apply only to the
12 extent that the sum of the money and the fair market value
13 of other property transferred to such creditors does not ex-
14 ceed the adjusted bases of such assets transferred.”.

15 (b) *LIABILITIES IN EXCESS OF BASIS.*—Section
16 357(c)(1)(B) is amended by inserting “with respect to
17 which stock or securities of the corporation to which the as-
18 sets are transferred are distributed in a transaction which
19 qualifies under section 355” after “section 368(a)(1)(D)”.

20 (c) *EFFECTIVE DATE.*—The amendments made by this
21 section shall apply to transfers of money or other property,
22 or liabilities assumed, in connection with a reorganization
23 occurring on or after the date of the enactment of this Act.

1 **SEC. 467. CLARIFICATION OF DEFINITION OF NON-**
2 **QUALIFIED PREFERRED STOCK.**

3 (a) *IN GENERAL.*—Section 351(g)(3)(A) is amended
4 by adding at the end the following: “Stock shall not be treat-
5 ed as participating in corporate growth to any significant
6 extent unless there is a real and meaningful likelihood of
7 the shareholder actually participating in the earnings and
8 growth of the corporation.”.

9 (b) *EFFECTIVE DATE.*—The amendment made by this
10 section shall apply to transactions after May 14, 2003.

11 **SEC. 468. MODIFICATION OF DEFINITION OF CONTROLLED**
12 **GROUP OF CORPORATIONS.**

13 (a) *IN GENERAL.*—Section 1563(a)(2) (relating to
14 brother-sister controlled group) is amended by striking
15 “possessing—” and all that follows through “(B)” and in-
16 serting “possessing”.

17 (b) *APPLICATION OF EXISTING RULES TO OTHER*
18 *CODE PROVISIONS.*—Section 1563(f) (relating to other defi-
19 nitions and rules) is amended by adding at the end the
20 following new paragraph:

21 “(5) *BROTHER-SISTER CONTROLLED GROUP DEF-*
22 *INITION FOR PROVISIONS OTHER THAN THIS PART.*—

23 “(A) *IN GENERAL.*—Except as specifically
24 provided in an applicable provision, 2 or more
25 corporations shall not be treated for purposes of
26 any applicable provision as a controlled group of

1 *corporations under subsection (a)(2) unless the*
2 *persons owning stock in such corporations meet-*
3 *ing the stock ownership requirements of sub-*
4 *section (a)(2) also own (within the meaning of*
5 *subsection (d)(2)) stock possessing at least 80*
6 *percent of the total combined voting power of all*
7 *classes of stock entitled to vote, or at least 80*
8 *percent of the total value of shares of all classes*
9 *of stock, of each corporation.*

10 *“(B) LESSER PERCENTAGES.—If an appli-*
11 *cable provision provides that subsection (a) shall*
12 *be applied by substituting a lesser percentage for*
13 *‘80 percent’, subparagraph (A) shall also be so*
14 *applied.*

15 *“(C) APPLICABLE PROVISION.—For pur-*
16 *poses of this paragraph, an applicable provision*
17 *is any provision of this title (other than this*
18 *part) which incorporates the definition of con-*
19 *trolled group of corporations under subsection*
20 *(a).”.*

21 *(c) EFFECTIVE DATE.—The amendments made by this*
22 *section shall apply to taxable years beginning after the date*
23 *of the enactment of this Act.*

1 **SEC. 469. MANDATORY BASIS ADJUSTMENTS IN CONNEC-**
2 **TION WITH PARTNERSHIP DISTRIBUTIONS**
3 **AND TRANSFERS OF PARTNERSHIP INTER-**
4 **ESTS.**

5 (a) *IN GENERAL.*—Section 754 is repealed.

6 (b) *ADJUSTMENT TO BASIS OF UNDISTRIBUTED PART-*
7 *NERSHIP PROPERTY.*—Section 734 is amended—

8 (1) *by striking “, with respect to which the elec-*
9 *tion provided in section 754 is in effect,” in the mat-*
10 *ter preceding paragraph (1) of subsection (b),*

11 (2) *by striking “(as adjusted by section 732(d))”*
12 *both places it appears in subsection (b),*

13 (3) *by striking the last sentence of subsection (b),*

14 (4) *by striking subsection (a) and by redesign-*
15 *ating subsections (b) and (c) as subsections (a) and*
16 *(b), respectively, and*

17 (5) *by striking “OPTIONAL” in the heading.*

18 (c) *ADJUSTMENT TO BASIS OF PARTNERSHIP PROP-*
19 *ERTY.*—Section 743 is amended—

20 (1) *by striking “with respect to which the elec-*
21 *tion provided in section 754 is in effect” in the mat-*
22 *ter preceding paragraph (1) of subsection (b),*

23 (2) *by striking subsection (a) and by redesign-*
24 *ating subsections (b) and (c) as subsections (a) and*
25 *(b), respectively,*

1 (3) *by adding at the end the following new sub-*
2 *section:*

3 “(c) *ELECTION TO ADJUST BASIS FOR TRANSFERS*
4 *UPON DEATH OF PARTNER.*—*Subsection (a) shall not*
5 *apply and no adjustments shall be made in the case of any*
6 *transfer of an interest in a partnership upon the death of*
7 *a partner unless an election to do so is made by the partner-*
8 *ship. Such an election shall apply with respect to all such*
9 *transfers of interests in the partnership. Any election under*
10 *section 754 in effect on the date of the enactment of this*
11 *subsection shall constitute an election made under this sub-*
12 *section. Such election may be revoked by the partnership,*
13 *subject to such limitations as may be provided by regula-*
14 *tions prescribed by the Secretary.”, and*

15 (4) *by striking “**OPTIONAL**” in the heading.*

16 (d) *CONFORMING AMENDMENTS.*—

17 (1) *Subsection (d) of section 732 is repealed.*

18 (2) *Section 755(a) is amended—*

19 (A) *by striking “section 734(b) (relating to*
20 *the optional adjustment” and inserting “section*
21 *734(a) (relating to the adjustment”, and*

22 (B) *by striking “section 743(b) (relating to*
23 *the optional adjustment” and inserting “section*
24 *743(a) (relating to the adjustment”.*

1 (3) Section 761(e)(2) is amended by striking
2 “optional”.

3 (4) Section 774(a) is amended by striking
4 “743(b)” both places it appears and inserting
5 “743(a)”.

6 (5) The item relating to section 734 in the table
7 of sections for subpart B of part II of subchapter K
8 of chapter 1 is amended by striking “Optional”.

9 (6) The item relating to section 743 in the table
10 of sections for subpart C of part II of subchapter K
11 of chapter 1 is amended by striking “Optional”.

12 (e) *EFFECTIVE DATES.*—

13 (1) *IN GENERAL.*—Except as provided in para-
14 graph (2), the amendments made by this section shall
15 apply to transfers and distributions made after the
16 date of the enactment of this Act.

17 (2) *REPEAL OF SECTION 732(d).*—The amend-
18 ments made by subsections (b)(2) and (d)(1) shall
19 apply to—

20 (A) except as provided in subparagraph
21 (B), transfers made after the date of the enact-
22 ment of this Act, and

23 (B) in the case of any transfer made on or
24 before such date to which section 732(d) applies,

1 *distributions made after the date which is 2*
2 *years after such date of enactment.*

3 **PART III—DEPRECIATION AND AMORTIZATION**

4 **SEC. 471. EXTENSION OF AMORTIZATION OF INTANGIBLES**
5 **TO SPORTS FRANCHISES.**

6 *(a) IN GENERAL.—Section 197(e) (relating to excep-*
7 *tions to definition of section 197 intangible) is amended*
8 *by striking paragraph (6) and by redesignating paragraphs*
9 *(7) and (8) as paragraphs (6) and (7), respectively.*

10 *(b) CONFORMING AMENDMENTS.—*

11 *(1)(A) Section 1056 (relating to basis limitation*
12 *for player contracts transferred in connection with*
13 *the sale of a franchise) is repealed.*

14 *(B) The table of sections for part IV of sub-*
15 *chapter O of chapter 1 is amended by striking the*
16 *item relating to section 1056.*

17 *(2) Section 1245(a) (relating to gain from dis-*
18 *position of certain depreciable property) is amended*
19 *by striking paragraph (4).*

20 *(3) Section 1253 (relating to transfers of fran-*
21 *chises, trademarks, and trade names) is amended by*
22 *striking subsection (e).*

23 *(c) EFFECTIVE DATES.—*

24 *(1) IN GENERAL.—Except as provided in para-*
25 *graph (2), the amendments made by this section shall*

1 *apply to property acquired after the date of the enact-*
2 *ment of this Act.*

3 (2) *SECTION 1245.—The amendment made by*
4 *subsection (b)(2) shall apply to franchises acquired*
5 *after the date of the enactment of this Act.*

6 **SEC. 472. SERVICE CONTRACTS TREATED IN SAME MANNER**
7 **AS LEASES FOR RULES RELATING TO TAX-EX-**
8 **EMPT USE PROPERTY.**

9 (a) *IN GENERAL.—Section 168(h)(7) (defining lease)*
10 *is amended by adding at the end the following: “Such term*
11 *shall also include any service contract or other similar ar-*
12 *rangement.”.*

13 (b) *LEASE TERM.—Section 168(i)(3) (relating to lease*
14 *term) is amended by adding at the end the following new*
15 *subparagraph:*

16 “(C) *SPECIAL RULE FOR SERVICE CON-*
17 *TRACTS.—In the case of any service contract or*
18 *other similar arrangement treated as a lease*
19 *under subsection (h)(7), the lease term shall be*
20 *determined in the same manner as a lease.”.*

21 (c) **CONFORMING AMENDMENTS.—Section**
22 *168(g)(3)(A) is amended—*

23 (1) *by inserting “(as defined in subsection*
24 *(h)(7)” after “lease” the first place it appears, and*

1 (2) by inserting “(as determined under sub-
2 section (i)(3))” after “term”.

3 (d) *EFFECTIVE DATE.*—*The amendments made by this*
4 *section shall apply to leases and service contracts or other*
5 *similar arrangements entered into after the date of the en-*
6 *actment of this Act.*

7 **SEC. 473. CLASS LIVES FOR UTILITY GRADING COSTS.**

8 (a) *GAS UTILITY PROPERTY.*—*Section 168(e)(3)(E)*
9 *(defining 15-year property) is amended by striking “and”*
10 *at the end of clause (ii), by striking the period at the end*
11 *of clause (iii) and inserting “, and”, and by adding at the*
12 *end the following new clause:*

13 *“(iv) initial clearing and grading land*
14 *improvements with respect to gas utility*
15 *property.”.*

16 (b) *ELECTRIC UTILITY PROPERTY.*—*Section 168(e)(3)*
17 *is amended by adding at the end the following new subpara-*
18 *graph:*

19 *“(F) 20-YEAR PROPERTY.*—*The term ‘20-*
20 *year property’ means initial clearing and grad-*
21 *ing land improvements with respect to any elec-*
22 *tric utility transmission and distribution*
23 *plant.”.*

24 (c) *CONFORMING AMENDMENTS.*—*The table contained*
25 *in section 168(g)(3)(B) is amended—*

1 (1) by inserting “or (E)(iv)” after “(E)(iii)”,
2 and

3 (2) by adding at the end the following new item:
“(F) 25”.

4 (d) *EFFECTIVE DATE.*—The amendments made by this
5 section shall apply to property placed in service after the
6 date of the enactment of this Act.

7 **SEC. 474. EXPANSION OF LIMITATION ON DEPRECIATION**
8 **OF CERTAIN PASSENGER AUTOMOBILES.**

9 (a) *IN GENERAL.*—Section 179(b) (relating to limita-
10 tions) is amended by adding at the end the following new
11 paragraph:

12 “(6) *LIMITATION ON COST TAKEN INTO ACCOUNT*
13 *FOR CERTAIN PASSENGER VEHICLES.*—

14 “(A) *IN GENERAL.*—The cost of any sport
15 utility vehicle for any taxable year which may
16 be taken into account under this section shall not
17 exceed \$25,000.

18 “(B) *SPORT UTILITY VEHICLE.*—For pur-
19 poses of subparagraph (A)—

20 “(i) *IN GENERAL.*—The term ‘sport
21 utility vehicle’ means any 4-wheeled vehicle
22 which—

23 “(I) is manufactured primarily
24 for use on public streets, roads, and
25 highways,

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1 “(II) is not subject to section
2 280F, and

3 “(III) is rated at not more than
4 14,000 pounds gross vehicle weight.

5 “(ii) CERTAIN VEHICLES EXCLUDED.—
6 Such term does not include any vehicle
7 which—

8 “(I) does not have the primary
9 load carrying device or container at-
10 tached,

11 “(II) has a seating capacity of
12 more than 12 individuals,

13 “(III) is designed for more than 9
14 individuals in seating rearward of the
15 driver’s seat,

16 “(IV) is equipped with an open
17 cargo area, or a covered box not read-
18 ily accessible from the passenger com-
19 partment, of at least 72.0 inches in in-
20 terior length, or

21 “(V) has an integral enclosure,
22 fully enclosing the driver compartment
23 and load carrying device, does not have
24 seating rearward of the driver’s seat,
25 and has no body section protruding

1 *more than 30 inches ahead of the lead-*
2 *ing edge of the windshield.”.*

3 *(c) EFFECTIVE DATE.—The amendments made by this*
4 *section shall apply to property placed in service after the*
5 *date of the enactment of this Act.*

6 **SEC. 475. CONSISTENT AMORTIZATION OF PERIODS FOR IN-**
7 **TANGIBLES.**

8 *(a) START-UP EXPENDITURES.—*

9 *(1) ALLOWANCE OF DEDUCTION.—Paragraph (1)*
10 *of section 195(b) (relating to start-up expenditures) is*
11 *amended to read as follows:*

12 *“(1) ALLOWANCE OF DEDUCTION.—If a taxpayer*
13 *elects the application of this subsection with respect to*
14 *any start-up expenditures—*

15 *“(A) the taxpayer shall be allowed a deduc-*
16 *tion for the taxable year in which the active*
17 *trade or business begins in an amount equal to*
18 *the lesser of—*

19 *“(i) the amount of start-up expendi-*
20 *tures with respect to the active trade or*
21 *business, or*

22 *“(ii) \$5,000, reduced (but not below*
23 *zero) by the amount by which such start-up*
24 *expenditures exceed \$50,000, and*

1 “(B) the remainder of such start-up expend-
2 itures shall be allowed as a deduction ratably
3 over the 180-month period beginning with the
4 month in which the active trade or business be-
5 gins.”.

6 (2) CONFORMING AMENDMENT.—Subsection (b)
7 of section 195 is amended by striking “AMORTIZE”
8 and inserting “DEDUCT” in the heading.

9 (b) ORGANIZATIONAL EXPENDITURES.—Subsection (a)
10 of section 248 (relating to organizational expenditures) is
11 amended to read as follows:

12 “(a) ELECTION TO DEDUCT.—If a corporation elects
13 the application of this subsection (in accordance with regu-
14 lations prescribed by the Secretary) with respect to any or-
15 ganizational expenditures—

16 “(1) the corporation shall be allowed a deduction
17 for the taxable year in which the corporation begins
18 business in an amount equal to the lesser of—

19 “(A) the amount of organizational expendi-
20 tures with respect to the taxpayer, or

21 “(B) \$5,000, reduced (but not below zero) by
22 the amount by which such organizational ex-
23 penditures exceed \$50,000, and

24 “(2) the remainder of such organizational ex-
25 penditures shall be allowed as a deduction ratably

1 *over the 180-month period beginning with the month*
2 *in which the corporation begins business.”.*

3 *(c) TREATMENT OF ORGANIZATIONAL AND SYNDICA-*
4 *TION FEES OR PARTNERSHIPS.—*

5 *(1) IN GENERAL.—Section 709(b) (relating to*
6 *amortization of organization fees) is amended by re-*
7 *designating paragraph (2) as paragraph (3) and by*
8 *amending paragraph (1) to read as follows:*

9 *“(1) ALLOWANCE OF DEDUCTION.—If a taxpayer*
10 *elects the application of this subsection (in accordance*
11 *with regulations prescribed by the Secretary) with re-*
12 *spect to any organizational expenses—*

13 *“(A) the taxpayer shall be allowed a deduc-*
14 *tion for the taxable year in which the partner-*
15 *ship begins business in an amount equal to the*
16 *lesser of—*

17 *“(i) the amount of organizational ex-*
18 *penses with respect to the partnership, or*

19 *“(ii) \$5,000, reduced (but not below*
20 *zero) by the amount by which such organi-*
21 *zational expenses exceed \$50,000, and*

22 *“(B) the remainder of such organizational*
23 *expenses shall be allowed as a deduction ratably*
24 *over the 180-month period beginning with the*
25 *month in which the partnership begins business.*

1 “(2) *DISPOSITIONS BEFORE CLOSE OF AMORTI-*
2 *ZATION PERIOD.*—*In any case in which a partnership*
3 *is liquidated before the end of the period to which*
4 *paragraph (1)(B) applies, any deferred expenses at-*
5 *tributable to the partnership which were not allowed*
6 *as a deduction by reason of this section may be de-*
7 *ducted to the extent allowable under section 165.”.*

8 (2) *CONFORMING AMENDMENT.*—*Subsection (b)*
9 *of section 709 is amended by striking “AMORTIZA-*
10 *TION” and inserting “DEDUCTION” in the heading.*

11 (d) *EFFECTIVE DATE.*—*The amendments made by this*
12 *section shall apply to amounts paid or incurred after the*
13 *date of the enactment of this Act.*

14 **SEC. 476. LIMITATION ON DEDUCTIONS ALLOCABLE TO**
15 **PROPERTY USED BY GOVERNMENTS OR**
16 **OTHER TAX-EXEMPT ENTITIES.**

17 (a) *IN GENERAL.*—*Subpart C of part II of subchapter*
18 *E of chapter 1 (relating to taxable year for which deduc-*
19 *tions taken) is amended by adding at the end the following*
20 *new section:*

21 **“SEC. 470. DEDUCTIONS ALLOCABLE TO PROPERTY USED**
22 **BY GOVERNMENTS OR OTHER TAX-EXEMPT**
23 **ENTITIES.**

24 “(a) *GENERAL RULE.*—*The aggregate amount of de-*
25 *ductions otherwise allowable to the taxpayer with respect*

1 *to tax-exempt use property for any taxable year shall not*
2 *exceed the aggregate amount of income includible in gross*
3 *income of the taxpayer for the taxable year with respect*
4 *to such property.*

5 “(b) *DISALLOWED DEDUCTION CARRIED TO NEXT*
6 *YEAR.—Except as otherwise provided in this section, any*
7 *deduction with respect to any tax-exempt use property*
8 *which is disallowed under subsection (a) shall, subject to*
9 *the limitation under subsection (a), be treated as a deduc-*
10 *tion with respect to such property in the next taxable year.*

11 “(c) *TAX-EXEMPT USE PROPERTY.—For purposes of*
12 *this section—*

13 “(1) *IN GENERAL.—The term ‘tax-exempt use*
14 *property’ has the meaning given such term by section*
15 *168(h), except that such section shall be applied with-*
16 *out regard to paragraphs (2)(C)(ii) and (3).*

17 “(2) *SPECIAL RULES FOR SERVICE CONTRACTS*
18 *AND SIMILAR ARRANGEMENTS.—If tangible property*
19 *is subject to a service contract or other similar ar-*
20 *rangement between a taxpayer (or any related per-*
21 *son) and any tax-exempt entity, such contract or ar-*
22 *rangement shall be treated in the same manner as if*
23 *it were a lease for purposes of determining whether*
24 *such property is tax-exempt use property under para-*
25 *graph (1).*

1 “(d) *SPECIAL RULES.*—

2 “(1) *ALLOCABLE DEDUCTIONS.*—*Subsection (a)*
3 *shall apply to—*

4 “(A) *any deduction directly allocable to any*
5 *tax-exempt use property, and*

6 “(B) *a proper share of other deductions that*
7 *are not directly allocable to such property.*

8 “(2) *PROPERTY CEASING TO BE TAX-EXEMPT*
9 *USE PROPERTY.*—*If property of a taxpayer ceases to*
10 *be tax-exempt use property in the hands of the*
11 *taxpayer—*

12 “(A) *any unused deduction allocable to such*
13 *property under subsection (b) shall only be al-*
14 *lowable as a deduction for any taxable year to*
15 *the extent of any net income of the taxpayer allo-*
16 *cable to such property, and*

17 “(B) *any portion of such unused deduction*
18 *remaining after application of subparagraph (A)*
19 *shall, subject to the limitation of subparagraph*
20 *(A), be treated as a deduction allocable to such*
21 *property in the next taxable year.*

22 “(3) *DISPOSITION OF ENTIRE INTEREST IN*
23 *PROPERTY.*—*If during the taxable year a taxpayer*
24 *disposes of the taxpayer’s entire interest in tax-ex-*
25 *empt use property, rules similar to the rules of section*

1 469(g) shall apply for purposes of this section in such
2 manner as the Secretary may prescribe.

3 “(e) *REGULATIONS.*—The Secretary shall prescribe
4 such regulations as may be necessary or appropriate to
5 carry out the provisions of this section.”.

6 (b) *CONFORMING AMENDMENT.*—The table of sections
7 for subpart C of part II of subchapter E of chapter 1 is
8 amended by adding at the end the following new item:

 “Sec. 470. Deductions allocable to property used by governments or other tax-ex-
 empt entities.”.

9 (c) *EFFECTIVE DATE.*—The amendments made by this
10 section shall apply to leases and service contracts or similar
11 arrangements entered into after the date of the enactment
12 of this Act.

13 **PART IV—ADMINISTRATIVE PROVISIONS**

14 **SEC. 481. CLARIFICATION OF RULES FOR PAYMENT OF ESTI-**
15 **MATED TAX FOR CERTAIN DEEMED ASSET**
16 **SALES.**

17 (a) *IN GENERAL.*—Paragraph (13) of section 338(h)
18 (relating to tax on deemed sale not taken into account for
19 estimated tax purposes) is amended by adding at the end
20 the following: “The preceding sentence shall not apply with
21 respect to a qualified stock purchase for which an election
22 is made under paragraph (10).”.

1 (b) *EFFECTIVE DATE.*—*The amendment made by sub-*
2 *section (a) shall apply to transactions occurring after the*
3 *date of the enactment of this Act.*

4 **SEC. 482. EXTENSION OF IRS USER FEES.**

5 (a) *IN GENERAL.*—*Section 7528(c) (relating to termi-*
6 *nation) is amended by striking “December 31, 2004” and*
7 *inserting “September 30, 2013”.*

8 (b) *EFFECTIVE DATE.*—*The amendment made by this*
9 *section shall apply to requests after the date of the enact-*
10 *ment of this Act.*

11 **SEC. 483. DOUBLING OF CERTAIN PENALTIES, FINES, AND**
12 **INTEREST ON UNDERPAYMENTS RELATED TO**
13 **CERTAIN OFFSHORE FINANCIAL ARRANGE-**
14 **MENT.**

15 (a) *GENERAL RULE.*—*If—*

16 (1) *a taxpayer eligible to participate in—*

17 (A) *the Department of the Treasury’s Off-*
18 *shore Voluntary Compliance Initiative, or*

19 (B) *the Department of the Treasury’s vol-*
20 *untary disclosure initiative which applies to the*
21 *taxpayer by reason of the taxpayer’s under-*
22 *reporting of United States income tax liability*
23 *through financial arrangements which rely on*
24 *the use of offshore arrangements which were the*

1 *subject of the initiative described in subpara-*
2 *graph (A), and*

3 (2) *any interest or applicable penalty is imposed*
4 *with respect to any arrangement to which any initia-*
5 *tive described in paragraph (1) applied or to any un-*
6 *derpayment of Federal income tax attributable to*
7 *items arising in connection with any arrangement*
8 *described in paragraph (1),*
9 *then, notwithstanding any other provision of law, the*
10 *amount of such interest or penalty shall be equal to twice*
11 *that determined without regard to this section.*

12 (b) *DEFINITIONS AND RULES.—For purposes of this*
13 *section—*

14 (1) *APPLICABLE PENALTY.—The term “applica-*
15 *ble penalty” means any penalty, addition to tax, or*
16 *fine imposed under chapter 68 of the Internal Rev-*
17 *enue Code of 1986.*

18 (2) *VOLUNTARY OFFSHORE COMPLIANCE INITIA-*
19 *TIVE.—The term “Voluntary Offshore Compliance*
20 *Initiative” means the program established by the De-*
21 *partment of the Treasury in January of 2003 under*
22 *which any taxpayer was eligible to voluntarily dis-*
23 *close previously undisclosed income on assets placed*
24 *in offshore accounts and accessed through credit card*
25 *and other financial arrangements.*

1 (3) *PARTICIPATION.*—*A taxpayer shall be treated*
2 *as having participated in the Voluntary Offshore*
3 *Compliance Initiative if the taxpayer submitted the*
4 *request in a timely manner and all information re-*
5 *quested by the Secretary of the Treasury or his dele-*
6 *gate within a reasonable period of time following the*
7 *request.*

8 (c) *EFFECTIVE DATE.*—*The provisions of this section*
9 *shall apply to interest, penalties, additions to tax, and fines*
10 *with respect to any taxable year if as of the date of the*
11 *enactment of this Act, the assessment of any tax, penalty,*
12 *or interest with respect to such taxable year is not prevented*
13 *by the operation of any law or rule of law.*

14 **SEC. 484. PARTIAL PAYMENT OF TAX LIABILITY IN INSTALL-**
15 **MENT AGREEMENTS.**

16 (a) *IN GENERAL.*—

17 (1) *Section 6159(a) (relating to authorization of*
18 *agreements) is amended—*

19 (A) *by striking “satisfy liability for pay-*
20 *ment of” and inserting “make payment on”, and*

21 (B) *by inserting “full or partial” after “fa-*
22 *cilitate”.*

23 (2) *Section 6159(c) (relating to Secretary re-*
24 *quired to enter into installment agreements in certain*

1 cases) is amended in the matter preceding paragraph
2 (1) by inserting “full” before “payment”.

3 (b) *REQUIREMENT TO REVIEW PARTIAL PAYMENT*
4 *AGREEMENTS EVERY TWO YEARS.*—Section 6159, as
5 amended by this Act, is amended by redesignating sub-
6 sections (d), (e), and (f) as subsections (e), (f), and (g), re-
7 spectively, and inserting after subsection (c) the following
8 new subsection:

9 “(d) *SECRETARY REQUIRED TO REVIEW INSTALL-*
10 *MENT AGREEMENTS FOR PARTIAL COLLECTION EVERY TWO*
11 *YEARS.*—In the case of an agreement entered into by the
12 Secretary under subsection (a) for partial collection of a
13 tax liability, the Secretary shall review the agreement at
14 least once every 2 years.”.

15 (c) *EFFECTIVE DATE.*—The amendments made by this
16 section shall apply to agreements entered into on or after
17 the date of the enactment of this Act.

18 **SEC. 485. EXTENSION OF CUSTOMS USER FEES.**

19 Section 13031(j)(3) of the Consolidated Omnibus
20 Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is
21 amended by striking “March 31, 2004” and inserting “Sep-
22 tember 30, 2013”.

1 **SEC. 486. DEPOSITS MADE TO SUSPEND RUNNING OF IN-**
2 **TEREST ON POTENTIAL UNDERPAYMENTS.**

3 (a) *IN GENERAL.*—Subchapter A of chapter 67 (relat-
4 ing to interest on underpayments) is amended by adding
5 at the end the following new section:

6 **“SEC. 6603. DEPOSITS MADE TO SUSPEND RUNNING OF IN-**
7 **TEREST ON POTENTIAL UNDERPAYMENTS,**
8 **ETC.**

9 “(a) *AUTHORITY TO MAKE DEPOSITS OTHER THAN*
10 *AS PAYMENT OF TAX.*—A taxpayer may make a cash de-
11 posit with the Secretary which may be used by the Sec-
12 retary to pay any tax imposed under subtitle A or B or
13 chapter 41, 42, 43, or 44 which has not been assessed at
14 the time of the deposit. Such a deposit shall be made in
15 such manner as the Secretary shall prescribe.

16 “(b) *NO INTEREST IMPOSED.*—To the extent that such
17 deposit is used by the Secretary to pay tax, for purposes
18 of section 6601 (relating to interest on underpayments), the
19 tax shall be treated as paid when the deposit is made.

20 “(c) *RETURN OF DEPOSIT.*—Except in a case where
21 the Secretary determines that collection of tax is in jeop-
22 ardy, the Secretary shall return to the taxpayer any
23 amount of the deposit (to the extent not used for a payment
24 of tax) which the taxpayer requests in writing.

25 “(d) *PAYMENT OF INTEREST.*—

1 “(1) *IN GENERAL.*—*For purposes of section 6611*
2 *(relating to interest on overpayments), a deposit*
3 *which is returned to a taxpayer shall be treated as a*
4 *payment of tax for any period to the extent (and only*
5 *to the extent) attributable to a disputable tax for such*
6 *period. Under regulations prescribed by the Secretary,*
7 *rules similar to the rules of section 6611(b)(2) shall*
8 *apply.*

9 “(2) *DISPUTABLE TAX.*—

10 “(A) *IN GENERAL.*—*For purposes of this*
11 *section, the term ‘disputable tax’ means the*
12 *amount of tax specified at the time of the deposit*
13 *as the taxpayer’s reasonable estimate of the max-*
14 *imum amount of any tax attributable to disput-*
15 *able items.*

16 “(B) *SAFE HARBOR BASED ON 30-DAY LET-*
17 *TER.*—*In the case of a taxpayer who has been*
18 *issued a 30-day letter, the maximum amount of*
19 *tax under subparagraph (A) shall not be less*
20 *than the amount of the proposed deficiency speci-*
21 *fied in such letter.*

22 “(3) *OTHER DEFINITIONS.*—*For purposes of*
23 *paragraph (2)—*

1 “(A) *DISPUTABLE ITEM*.—The term ‘disput-
2 able item’ means any item of income, gain, loss,
3 deduction, or credit if the taxpayer—

4 “(i) has a reasonable basis for its
5 treatment of such item, and

6 “(ii) reasonably believes that the Sec-
7 retary also has a reasonable basis for dis-
8 allowing the taxpayer’s treatment of such
9 item.

10 “(B) *30-DAY LETTER*.—The term ‘30-day
11 letter’ means the first letter of proposed defi-
12 ciency which allows the taxpayer an opportunity
13 for administrative review in the Internal Rev-
14 enue Service Office of Appeals.

15 “(4) *RATE OF INTEREST*.—The rate of interest
16 allowable under this subsection shall be the Federal
17 short-term rate determined under section 6621(b),
18 compounded daily.

19 “(e) *USE OF DEPOSITS*.—

20 “(1) *PAYMENT OF TAX*.—Except as otherwise
21 provided by the taxpayer, deposits shall be treated as
22 used for the payment of tax in the order deposited.

23 “(2) *RETURNS OF DEPOSITS*.—Deposits shall be
24 treated as returned to the taxpayer on a last-in, first-
25 out basis.”.

1 (b) *CLERICAL AMENDMENT.*—*The table of sections for*
2 *subchapter A of chapter 67 is amended by adding at the*
3 *end the following new item:*

*“Sec. 6603. Deposits made to suspend running of interest on poten-
tial underpayments, etc.”.*

4 (c) *EFFECTIVE DATE.*—

5 (1) *IN GENERAL.*—*The amendments made by*
6 *this section shall apply to deposits made after the*
7 *date of the enactment of this Act.*

8 (2) *COORDINATION WITH DEPOSITS MADE UNDER*
9 *REVENUE PROCEDURE 84–58.*—*In the case of an*
10 *amount held by the Secretary of the Treasury or his*
11 *delegate on the date of the enactment of this Act as*
12 *a deposit in the nature of a cash bond deposit pursu-*
13 *ant to Revenue Procedure 84–58, the date that the*
14 *taxpayer identifies such amount as a deposit made*
15 *pursuant to section 6603 of the Internal Revenue*
16 *Code (as added by this Act) shall be treated as the*
17 *date such amount is deposited for purposes of such*
18 *section 6603.*

19 **SEC. 487. QUALIFIED TAX COLLECTION CONTRACTS.**

20 (a) *CONTRACT REQUIREMENTS.*—

21 (1) *IN GENERAL.*—*Subchapter A of chapter 64*
22 *(relating to collection) is amended by adding at the*
23 *end the following new section:*

1 **“SEC. 6306. QUALIFIED TAX COLLECTION CONTRACTS.**

2 “(a) *IN GENERAL.*—*Nothing in any provision of law*
3 *shall be construed to prevent the Secretary from entering*
4 *into a qualified tax collection contract.*

5 “(b) *QUALIFIED TAX COLLECTION CONTRACT.*—*For*
6 *purposes of this section, the term ‘qualified tax collection*
7 *contract’ means any contract which—*

8 “(1) *is for the services of any person (other than*
9 *an officer or employee of the Treasury Department)—*

10 “(A) *to locate and contact any taxpayer*
11 *specified by the Secretary,*

12 “(B) *to request full payment from such tax-*
13 *payer of an amount of Federal tax specified by*
14 *the Secretary and, if such request cannot be met*
15 *by the taxpayer, to offer the taxpayer an install-*
16 *ment agreement providing for full payment of*
17 *such amount during a period not to exceed 3*
18 *years, and*

19 “(C) *to obtain financial information speci-*
20 *fied by the Secretary with respect to such tax-*
21 *payer,*

22 “(2) *prohibits each person providing such serv-*
23 *ices under such contract from committing any act or*
24 *omission which employees of the Internal Revenue*
25 *Service are prohibited from committing in the per-*
26 *formance of similar services,*

1 “(3) prohibits subcontractors from—

2 “(A) having contacts with taxpayers,

3 “(B) providing quality assurance services,

4 and

5 “(C) composing debt collection notices, and

6 “(4) permits subcontractors to perform other

7 services only with the approval of the Secretary.

8 “(c) FEES.—The Secretary may retain and use an
9 amount not in excess of 25 percent of the amount collected
10 under any qualified tax collection contract for the costs of
11 services performed under such contract. The Secretary shall
12 keep adequate records regarding amounts so retained and
13 used. The amount credited as paid by any taxpayer shall
14 be determined without regard to this subsection.

15 “(d) NO FEDERAL LIABILITY.—The United States
16 shall not be liable for any act or omission of any person
17 performing services under a qualified tax collection con-
18 tract.

19 “(e) APPLICATION OF FAIR DEBT COLLECTION PRAC-
20 TICES ACT.—The provisions of the Fair Debt Collection
21 Practices Act (15 U.S.C. 1692 et seq.) shall apply to any
22 qualified tax collection contract, except to the extent super-
23 seded by section 6304, section 7602(c), or by any other pro-
24 vision of this title.

25 “(f) CROSS REFERENCES.—

1 “(1) *For damages for certain unauthorized col-*
2 *lection actions by persons performing services under*
3 *a qualified tax collection contract, see section 7433A.*

4 “(2) *For application of Taxpayer Assistance Or-*
5 *ders to persons performing services under a qualified*
6 *tax collection contract, see section 7811(a)(4).”.*

7 (2) *CONFORMING AMENDMENTS.—*

8 (A) *Section 7809(a) is amended by insert-*
9 *ing “6306,” before “7651”.*

10 (B) *The table of sections for subchapter A of*
11 *chapter 64 is amended by adding at the end the*
12 *following new item:*

“Sec. 6306. Qualified Tax Collection Contracts.”.

13 (b) *CIVIL DAMAGES FOR CERTAIN UNAUTHORIZED*
14 *COLLECTION ACTIONS BY PERSONS PERFORMING SERVICES*
15 *UNDER QUALIFIED TAX COLLECTION CONTRACTS.—*

16 (1) *IN GENERAL.—Subchapter B of chapter 76*
17 *(relating to proceedings by taxpayers and third par-*
18 *ties) is amended by inserting after section 7433 the*
19 *following new section:*

20 **“SEC. 7433A. CIVIL DAMAGES FOR CERTAIN UNAUTHORIZED**
21 **COLLECTION ACTIONS BY PERSONS PER-**
22 **FORMING SERVICES UNDER QUALIFIED TAX**
23 **COLLECTION CONTRACTS.**

24 “(a) *IN GENERAL.—Subject to the modifications pro-*
25 *vided by subsection (b), section 7433 shall apply to the acts*

1 *and omissions of any person performing services under a*
2 *qualified tax collection contract (as defined in section*
3 *6306(b)) to the same extent and in the same manner as*
4 *if such person were an employee of the Internal Revenue*
5 *Service.*

6 “(b) *MODIFICATIONS.—For purposes of subsection*
7 *(a)—*

8 “(1) *Any civil action brought under section 7433*
9 *by reason of this section shall be brought against the*
10 *person who entered into the qualified tax collection*
11 *contract with the Secretary and shall not be brought*
12 *against the United States.*

13 “(2) *Such person and not the United States shall*
14 *be liable for any damages and costs determined in*
15 *such civil action.*

16 “(3) *Such civil action shall not be an exclusive*
17 *remedy with respect to such person.*

18 “(4) *Subsections (c), (d)(1), and (e) of section*
19 *7433 shall not apply.”.*

20 (2) *CLERICAL AMENDMENT.—The table of sec-*
21 *tions for subchapter B of chapter 76 is amended by*
22 *inserting after the item relating to section 7433 the*
23 *following new item:*

“Sec. 7433A. *Civil damages for certain unauthorized collection ac-*
tions by persons performing services under a quali-
fied tax collection contract.”.

1 (c) *APPLICATION OF TAXPAYER ASSISTANCE ORDERS*
2 *TO PERSONS PERFORMING SERVICES UNDER A QUALIFIED*
3 *TAX COLLECTION CONTRACT.*—Section 7811 (relating to
4 *taxpayer assistance orders*) is amended by adding at the
5 *end the following new subsection:*

6 “(g) *APPLICATION TO PERSONS PERFORMING SERV-*
7 *ICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.*—
8 *Any order issued or action taken by the National Taxpayer*
9 *Advocate pursuant to this section shall apply to persons*
10 *performing services under a qualified tax collection contract*
11 *(as defined in section 6306(b)) to the same extent and in*
12 *the same manner as such order or action applies to the Sec-*
13 *retary.”.*

14 (d) *INELIGIBILITY OF INDIVIDUALS WHO COMMIT MIS-*
15 *CONDUCT TO PERFORM UNDER CONTRACT.*—Section 1203
16 *of the Internal Revenue Service Restructuring Act of 1998*
17 *(relating to termination of employment for misconduct) is*
18 *amended by adding at the end the following new subsection:*

19 “(e) *INDIVIDUALS PERFORMING SERVICES UNDER A*
20 *QUALIFIED TAX COLLECTION CONTRACT.*— *An individual*
21 *shall cease to be permitted to perform any services under*
22 *any qualified tax collection contract (as defined in section*
23 *6306(b) of the Internal Revenue Code of 1986) if there is*
24 *a final determination by the Secretary of the Treasury*
25 *under such contract that such individual committed any*

1 *act or omission described under subsection (b) in connection*
2 *with the performance of such services.”.*

3 (e) *EFFECTIVE DATE.*—*The amendments made to this*
4 *section shall take effect on the date of the enactment of this*
5 *Act.*

6 **PART V—MISCELLANEOUS PROVISIONS**

7 **SEC. 491. ADDITION OF VACCINES AGAINST HEPATITIS A TO**
8 **LIST OF TAXABLE VACCINES.**

9 (a) *IN GENERAL.*—*Section 4132(a)(1) (defining tax-*
10 *able vaccine) is amended by redesignating subparagraphs*
11 *(I), (J), (K), and (L) as subparagraphs (J), (K), (L), and*
12 *(M), respectively, and by inserting after subparagraph (H)*
13 *the following new subparagraph:*

14 (I) *Any vaccine against hepatitis A.”.*

15 (b) *CONFORMING AMENDMENT.*—*Section*
16 *9510(c)(1)(A) is amended by striking “October 18, 2000”*
17 *and inserting “May 8, 2003”.*

18 (c) *EFFECTIVE DATE.*—

19 (1) *SALES, ETC.*—*The amendments made by this*
20 *section shall apply to sales and uses on or after the*
21 *first day of the first month which begins more than*
22 *4 weeks after the date of the enactment of this Act.*

23 (2) *DELIVERIES.*—*For purposes of paragraph*
24 *(1) and section 4131 of the Internal Revenue Code of*
25 *1986, in the case of sales on or before the effective date*

1 *described in such paragraph for which delivery is*
2 *made after such date, the delivery date shall be con-*
3 *sidered the sale date.*

4 **SEC. 492. RECOGNITION OF GAIN FROM THE SALE OF A**
5 **PRINCIPAL RESIDENCE ACQUIRED IN A LIKE-**
6 **KIND EXCHANGE WITHIN 5 YEARS OF SALE.**

7 *(a) IN GENERAL.—Section 121(d) (relating to special*
8 *rules for exclusion of gain from sale of principal residence)*
9 *is amended by adding at the end the following new para-*
10 *graph:*

11 *“(10) PROPERTY ACQUIRED IN LIKE-KIND EX-*
12 *CHANGE.—If a taxpayer acquired property in an ex-*
13 *change to which section 1031 applied, subsection (a)*
14 *shall not apply to the sale or exchange of such prop-*
15 *erty if it occurs during the 5-year period beginning*
16 *with the date of the acquisition of such property.”.*

17 *(b) EFFECTIVE DATE.—The amendment made by this*
18 *section shall apply to sales or exchanges after the date of*
19 *the enactment of this Act.*

20 **SEC. 493. CLARIFICATION OF EXEMPTION FROM TAX FOR**
21 **SMALL PROPERTY AND CASUALTY INSUR-**
22 **ANCE COMPANIES.**

23 *(a) IN GENERAL.—Section 501(c)(15)(A) is amended*
24 *to read as follows:*

1 (b) *EFFECTIVE DATE.*—*The amendment made by this*
2 *section shall apply to taxable years beginning after Decem-*
3 *ber 31, 2003.*

4 **SEC. 495. LIMITATIONS ON DEDUCTION FOR CHARITABLE**
5 **CONTRIBUTIONS OF PATENTS AND SIMILAR**
6 **PROPERTY.**

7 (a) *DEDUCTION ALLOWED ONLY TO THE EXTENT OF*
8 *BASIS.*—*Section 170(e)(1)(B) (relating to certain contribu-*
9 *tions of ordinary income and capital gain property) is*
10 *amended by striking “or” at the end of clause (i), by adding*
11 *“or” at the end of clause (ii), and by inserting after clause*
12 *(ii) the following new clause:*

13 *“(iii) of any patent, copyright, trade-*
14 *mark, trade name, trade secret, know-how,*
15 *software, or similar property, or applica-*
16 *tions or registrations of such property.”.*

17 (b) *TREATMENT OF CONTRIBUTIONS WHERE DONOR*
18 *RECEIVES INTEREST.*—*Section 170(e) is amended by add-*
19 *ing at the end the following new paragraph:*

20 *“(7) SPECIAL RULES FOR CONTRIBUTIONS OF*
21 *PATENTS AND SIMILAR PROPERTY WHERE DONOR RE-*
22 *CEIVES INTEREST.—*

23 *“(A) DISALLOWANCE OF DEDUCTION.—No*
24 *deduction shall be allowed under this section*
25 *with respect to a contribution of property de-*

1 *scribed in paragraph (1)(B)(iii) if the taxpayer*
2 *after the contribution has any interest in the*
3 *property other than a qualified interest.*

4 “(B) *CONTRIBUTIONS WITH QUALIFIED IN-*
5 *TEREST.—If a taxpayer after a contribution of*
6 *property described in paragraph (1)(B)(iii) has*
7 *a qualified interest in the property—*

8 “(i) *any payment pursuant to the*
9 *qualified interest shall be treated as ordi-*
10 *nary income and shall be includible in gross*
11 *income of the taxpayer for the taxable year*
12 *in which the payment is received by the*
13 *taxpayer, and*

14 “(ii) *subsection (f)(3) and section*
15 *1011(b) shall not apply to the transfer of*
16 *the property from the taxpayer to the donee.*

17 “(C) *QUALIFIED INTEREST.—For purposes*
18 *of this paragraph—*

19 “(i) *IN GENERAL.—The term ‘qualified*
20 *interest’ means, with respect to any tax-*
21 *payer, a right to receive from the donee a*
22 *percentage (not greater than 50 percent) of*
23 *any royalty payment received by the donee*
24 *with respect to property described in para-*
25 *graph (1)(B)(iii) (other than copyrights*

1 *which are described in section 1221(a)(3) or*
2 *1231(b)(1)(C)) contributed by the taxpayer*
3 *to the donee.*

4 “(ii) *SECRETARIAL AUTHORITY.*—

5 “(I) *IN GENERAL.*—*Except as pro-*
6 *vided in subclause (II), the Secretary*
7 *may by regulation or other adminis-*
8 *trative guidance treat as a qualified*
9 *interest the right to receive other pay-*
10 *ments from the donee, but only if the*
11 *donee does not possess a right to receive*
12 *any payment (whether royalties or oth-*
13 *erwise) from a third party with respect*
14 *to the contributed property.*

15 “(II) *EXCEPTIONS.*—*The Sec-*
16 *retary may not treat as a qualified in-*
17 *terest the right to receive any payment*
18 *which provides a benefit to the donor*
19 *which is greater than the benefit re-*
20 *tained by the donee or the right to re-*
21 *ceive any portion of the proceeds from*
22 *the sale of the property contributed.*

23 “(iii) *LIMITATION.*—*An interest shall*
24 *be treated as a qualified interest under this*
25 *subparagraph only if the taxpayer has no*

1 *right to receive any payment described in*
2 *clause (i) or (ii)(I) after the earlier of the*
3 *date on which the legal life of the contrib-*
4 *uted property expires or the date which is*
5 *20 years after the date of the contribution.”.*

6 *(c) REPORTING REQUIREMENTS.—*

7 *(1) IN GENERAL.—Section 6050L(a) (relating to*
8 *returns regarding certain dispositions of donated*
9 *property) is amended—*

10 *(A) by striking “If” and inserting:*

11 *“(1) DISPOSITIONS OF DONATED PROPERTY.—*
12 *If’,*

13 *(B) by redesignating paragraphs (1)*
14 *through (5) as subparagraphs (A) through (E),*
15 *respectively, and*

16 *(C) by adding at the end the following new*
17 *paragraph:*

18 *“(2) PAYMENTS OF QUALIFIED INTERESTS.—*
19 *Each donee of property described in section*
20 *170(e)(1)(B)(iii) which makes a payment to a donor*
21 *pursuant to a qualified interest (as defined in section*
22 *170(e)(7)) during any calendar year shall make a re-*
23 *turn (in accordance with forms and regulations pre-*
24 *scribed by the Secretary) showing—*

1 “(A) the name, address, and TIN of the
2 payor and the payee with respect to such a pay-
3 ment,

4 “(B) a description, and date of contribu-
5 tion, of the property to which the qualified inter-
6 est relates,

7 “(C) the dates and amounts of any royalty
8 payments received by the donee with respect to
9 such property,

10 “(D) the date and the amount of the pay-
11 ment pursuant to the qualified interest, and

12 “(E) a description of the terms of the quali-
13 fied interest.”.

14 (2) CONFORMING AMENDMENTS.—

15 (A) The heading for section 6050L is
16 amended by striking “**CERTAIN DISPOSI-**
17 **TIONS OF**”.

18 (B) The item relating to section 6050L in
19 the table of sections for subpart B of part III of
20 subchapter A of chapter 61 is amended by strik-
21 ing “certain dispositions of”.

22 (d) ANTI-ABUSE RULES.—The Secretary of the Treas-
23 ury may prescribe such regulations or other administrative
24 guidance as may be necessary or appropriate to prevent the
25 avoidance of the purposes of section 170(e)(1)(B)(iii) of the

1 *Internal Revenue Code of 1986 (as added by subsection (a)),*
2 *including preventing—*

3 (1) *the circumvention of the reduction of the*
4 *charitable deduction by embedding or bundling the*
5 *patent or similar property as part of a charitable*
6 *contribution of property that includes the patent or*
7 *similar property,*

8 (2) *the manipulation of the basis of the property*
9 *to increase the amount of the charitable deduction*
10 *through the use of related persons, pass-thru entities,*
11 *or other intermediaries, or through the use of any*
12 *provision of law or regulation (including the consoli-*
13 *dated return regulations), and*

14 (3) *a donor from changing the form of the patent*
15 *or similar property to property of a form for which*
16 *different deduction rules would apply.*

17 (e) *EFFECTIVE DATE.—The amendments made by this*
18 *section shall apply to contributions made after October 1,*
19 *2003.*

20 **SEC. 496. REPEAL OF 10-PERCENT REHABILITATION TAX**

21 **CREDIT.**

22 *Section 47 is amended by adding at the end the fol-*
23 *lowing new subsection:*

1 “(e) *TERMINATION.*—*This section shall not apply to*
2 *expenditures described in subsection (a)(1) incurred in tax-*
3 *able years beginning after December 31, 2003.*”.

4 **SEC. 497. INCREASE IN AGE OF MINOR CHILDREN WHOSE**
5 **UNEARNED INCOME IS TAXED AS IF PARENT'S**
6 **INCOME.**

7 (a) *IN GENERAL.*—*Section 1(g)(2)(A) (relating to*
8 *child to whom subsection applies) is amended by striking*
9 *“age 14” and inserting “age 18”.*

10 (b) *EFFECTIVE DATE.*—*The amendment made by this*
11 *section shall apply to taxable years beginning after Decem-*
12 *ber 31, 2003.*